# TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 283. 41.

THE CRYSTAL SPRINGS LAND AND WATER COMPANY AND S. G. MURPHY, APPELLANTS,

*vs.*

THE CITY OF LOS ANGELES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

FILED DECEMBER 16, 1897.

(16,751.)

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# SUPREME COURT OF THE UNITED STATES.

## OCTOBER TERM, 1897.

No. 538.

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THE CRYSTAL SPRINGS LAND AND WATER COMPANY AND S. G. MURPHY, APPELLANTS,

*vs.*

THE CITY OF LOS ANGELES.

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APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

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INDEX.


| | Original. | Print. |
|---|---|---|
| Citation and service of same | *a* | 1 |
| Caption | 1 | 1 |
| Enrolled papers | 2 | 1 |
| Bill of complaint | 2 | 2 |
| Subpœna | 21 | 12 |
| Marshal's return of service | 22 | 13 |
| Demurrer and plea to bill | 23 | 13 |
| Order allowing an amendment of the bill | 28 | 16 |
| Amendment to complaint | 30 | 17 |
| Demurrer to bill | 32 | 18 |
| Order overruling demurrer | 34 | 19 |
| Answer | 36 | 20 |
| Replication | 73 | 41 |
| Order dismissing suit | 75 | 42 |
| Enrollment | 77 | 42 |


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| | Original. | Print. |
|---|---|---|
| Final decree | 79 | 43 |
| Certificate to enrolled papers | 81 | 44 |
| Notice of motion to dismiss | 82 | 45 |
| Opinion of the court on demurrer to the bill | 84 | 45 |
| Opinion of the court on motion to dismiss the bill | 100 | 54 |
| Assignment of errors | 122 | 66 |
| Petition for appeal and allowance | 124 | 67 |
| Certificate that jurisdiction of court was in issue | 125 | 68 |
| Order allowing appeal | 126 | 68 |
| Bond on appeal | 128 | 69 |
| Clerk's certificate | 130 | 70 |

a UNITED STATES OF AMERICA, *ss:*

To the City of Los Angeles, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, in the District of Columbia, on the 18th day of December, A. D. 1897, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the southern district of California, wherein The Crystal Springs Land and Water Company and S. G. Murphy are appellants and you are appellee, to show cause, if any there be, why the judgment in the said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Olin Wellborn, United States district judge for the southern district of California and one of the judges of the United States circuit court for the southern district of California, this 19th day of October, A. D. 1897, and of the Independence of the United States the one hundred and twenty-second.

OLIN WELLBORN,
*United States District Judge for the Southern District of California.*

b [Endorsed:] No. 583. In the Supreme Court of the United States. The Crystal Springs Land & Water Company and S. G. Murphy *vs.* The City of Los Angeles. Citation. Received copy of the within citation this 19th day of October, A. D. 1897. W. E. Dunn, Lee & Scott, attorneys for defendant. Filed Oct. 19, 1897. Wm. M. Van Dyke, clerk, by E. H. Owen, deputy.

1 In the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California.

THE CRYSTAL SPRINGS LAND AND WATER COMPANY and S. G. MURPHY, Complainants,
*vs.*
THE CITY OF LOS ANGELES, Defendant. } No. 583.

2 In the Circuit Court of the United States, Ninth Circuit, for the Southern District of California.

THE CRYSTAL SPRINGS LAND AND WATER COMPANY and S. G. MURPHY, Plaintiffs,
*vs.*
THE CITY OF LOS ANGELES, Defendant. } No. 583.

To the honorable judge of the circuit court of the United States in and for the southern district of California:

The Crystal Springs Land and Water Company, a corporation organized under and in pursuance of the laws of the State of California and having its principal place of business in the city of Los

Angeles, county of Los Angeles, in said State, and S. G. Murphy bring this their bill of complaint against the City of Los Angeles, a municipal corporation organized under the laws of the State of California; and thereupon your orators complain and say:

I.

That on or about the 22nd day of March, 1843, Manuel Micheltorena, then being the governor of both Californias, appointed under the Mexican government, granted to Maria Ignacia Berdugo a certain tract of land bounded on the south by the north boundary of the city of Los Angeles, and which said tract of land was known as the Rancho Los Felis, and after the acquisition of California by the United States, to wit, on or about the 26 day of October, 1852, the said Maria Ignacia
3 Berdugo, claiming under the said grant from Manuel Micheltorena, presented her said claim to the commissioners appointed to ascertain and settle the private land claims in the State of California under an act entitled An act to ascertain and settle the private land claims in the State of California, approved March the 3rd, 1851, and filed her petition claiming the confirmation of her title to the said tract of land known by the name of Los Felis and situated in the county of Los Angeles, State aforesaid; and thereupon such proceedings were had before the said board of land commissioners that on the 28th day of February, 1854, the said board of land commissioners rendered a decree of confirmation in favor of the said claimant, and an appeal was taken from the said decree of the board of land commissioners to the district court of the United States for the southern district of California, and the said court did, at its December term in 1856, by its order and decree, affirm the decision of the said commissioners, and did decree that the title of the said Maria Ignacia Berdugo to the lands aforesaid was good and valid; and further decreed that the lands of which confirmation was thereby made *was* situated in the county of Los Angeles and known by the name of Los Felis, and being the same lands granted to the said Maria Ignacia Berdugo by Manuel Micheltorena, governor of California, on the 22nd day of March, 1843, and bounded on the north by the lands of Julio Berdugo, on the south by the River Los Angeles, on the east by the rancho of Juan Moreno, and on the west by the mountains; and thereupon, the Attorney General of the United States having given notice that an appeal would not be prosecuted to the Supreme Court of the United States, it was by the said district court, at its December term, 1857, ordered that
4 the said appeal should be, and the same was thereby, dismissed, and that the appellee should have leave to proceed under the decree theretofore made in her favor as under a final decree; and afterwards a survey of the said granted premises was made by and under the authority of the United States, and thereafter, to wit, on the 18th day of April, 1871, a patent was duly issued by the United States to the said Maria Ignacia Berdugo, giving and granting unto her, the said Maria Ignacia Berdugo, the said Rancho Los Felis.

II.

And your orators further state and show that on the 20th day of October, 1784, a grant was made by Pedro Fajes to Julio Berdugo and others of a certain tract of land of eight square leagues, situated in Los Angeles county and bounded upon the western side thereof by the Los Angeles river and known as the San Rafael rancho, and which said grant was subsequently, to wit, on the 12th day of January, 1798, confirmed to Jose Maria Berdugo, and after the acquisition of the State of California by the United States Government a claim to the said grant was presented to the board of land commissioners appointed under the act entitled An act to ascertain and settle the private land claims in the State of California, approved March the 3rd, 1851, on the 21st day of October, 1852; and the said claim to said San Rafael rancho was confirmed by the said board of land commissioners on the 11th day of September, 1855, and finally confirmed by the United States district court on June the 4th, 1857; and thereafter, to wit, on the — day of ——, 18—, a patent was duly issued by the Government of the United States granting the said tract of land known as the San Rafael rancho to the claimant.

5 III.

Your orators further state and show that the mayor and common council of the city of Los Angeles filed their petition on the 26th day of October, 1852, with the commissioners to ascertain and settle the private land claims in the State of California, appointed under the said act of Congress approved the 3rd day of March, 1851, entitled an Act to ascertain and settle private land claims in the State of California, in which petition they claimed the confirmation of their title to a tract of land designated as the city of Los Angeles, containing sixteen square leagues, situated in the county of Los Angeles and State aforesaid, the said claim being founded on a Mexican grant to the petitioners made on the 25th day of August, 1844, by Manuel Micheltorena, the governor of the department of the Californias; and afterwards, to wit, on the 5th day of February, 1856, the said board of land commissioners rendered a decree confirming the said claim in part, to wit, to four square leagues of land, and rejected the said claim to the remainder, and an appeal was taken from the said decree to the district court of the United States for the southern district of California by the mayor and common council of the city of Los Angeles and the United States, and the appeal of both parties from the said decision of the board of land commissioners was dismissed, and the said mayor and common council of the city of Los Angeles were permitted to proceed under the said decision as under a final decree; and thereafter the claim of the said mayor and common council was surveyed by and under the authority of the United States, and a patent was duly issued by the United States to the mayor and common council of the city of Los Angeles for the said tract of land so confirmed, to wit, the four

square leagues, as located by the said survey, which said pat-
6 ent was issued on the 9th day of August, 1866, and the said tract so conveyed to the mayor and common council upon the said confirmed grant is bounded on the north by the said two ranchos, the Rancho Los Felis and the Rancho San Rafael.

IV.

Your orators further state and show that the Los Angeles river rises in the mountains to the north of the said city of Los Angeles and the lands patented to the mayor and common council as aforesaid and to the north of the said Los Felis and San Rafael ranchos, and flows down to and through the said Rancho Los Felis and the Rancho San Rafael from the north to the south and forming the common boundary of the said two ranchos for a considerable distance, and flows into the city of Los Angeles and the lands described in the said patent to the mayor and common council at or near the middle point of the northern boundary of the said city and in a southerly direction through the said city of Los Angeles.

V.

Your orators further state and show that the Crystal Springs Land and Water Company is the owner of a certain tract of land, part of the Los Felis rancho, claiming under and through the said Mexican grant and the proceedings thereupon taken and the patent issued by the United States to the said grantee, and situated in the county of Los Angeles and described as follows, to wit: Beginning at the oak tree designated as the initial point of the survey of the tract of land known as the Crystal Springs tract, and which said Crystal Springs tract is situated in the said Los Felis rancho and is part thereof, and which said tract was conveyed by Charles V. Howard to the Los Angeles City Water Company by a deed of date September 15, 1868, and recorded in Book Ten of Deeds, page
7 416, records of Los Angeles county, and running from the said initial point south $81\frac{1}{2}°$ east 168 feet to a point, thence north 17° east 600 feet to a point; thence north $81\frac{1}{2}°$ west 300 feet to a point; thence south 17° west 600 feet to a point: thence south $81\frac{1}{2}°$ east 132 feet to the said oak tree at the point of beginning, and containing 4.9 acres of land.

VI.

Your orators further state and show that on and prior to the 14th day of June, 1886, one G. J. Griffith was the owner of about four thousand nine hundred acres of the said Los Felis rancho, having derived his title by and through the said patent of the United States to the Mexican grantee, and which said tract so owned by the said G. J. Griffith comprised all of the lands within the Los Felis rancho, hereinafter mentioned and described as the water-bearing lands, save and except the said 4.9 acres of land part of the so-called Crystal Springs tract, and on the 14th day of June, 1886, the said G. J.

Griffith conveyed to the Los Angeles City Water Company the right to develop water upon all that part of the Los Felis rancho belonging to him, described as follows, to wit: That portion of the Crystal Springs tract conveyed to the said G. J. Griffith by the Los Angeles City Water Company on the said 14th day of June, 1886, and which was all of the Crystal Springs tract except the said 4.9 acres hereinbefore described; and, secondly, the right to develop water on that other portion of the Los Felis rancho bounded on the northwest by the southeasterly boundary of the said Crystal Springs tract, and ranging north 11¾° east, and its prolongation to the northward to the intersection with the eastern boundary of the Rancho de Los Felis, and on the southeast by a line parallel thereto, distant therefrom one thousand feet, and bounded on the southwest by the
8 ditch then in the course of construction from the Crystal Springs tract to the Los Angeles river, and on the northeast by the boundary line of the Rancho de Los Felis; and afterwards the said G. J. Griffith granted to the said Los Angeles City Water Company the right to develop water upon other portions of the said Los Felis rancho upon which and in which the said pipes hereinafter described were laid, and all of said grants of right to develop water made by the said G. J. Griffith, as aforesaid, were upon tracts which were part of the said Los Felis rancho, and hereinafter referred to as the water-bearing lands.

## VII.

And your orator further states and shows that subsequent and long prior to the commencement of this suit the Crystal Springs Land and Water Company acquired the title to a tract of land, part of the San Rafael rancho, and ever since has held and still holds and owns the said tract of land, subject to the rights of the said S. G. Murphy, under a trust deed hereinafter referred to, and in which said tract of land in the San Rafael rancho the said pipes hereinafter described are also laid.

## VIII.

Your orators further state and show that north of the said city of Los Angeles and extending up the said Los Angeles river, at a point commencing about a half mile above the north boundary of the city and extending a distance of fifteen or twenty miles, the Los Angeles River valley varies in width from about a mile to two or three miles, and that upon the said Los Felis rancho and the San Rafael rancho is a large body of land, containing about five hundred acres, in which a large amount of water is percolating, the same being supplied by the rainfall upon an immense water-shed, the whole
9 tract constituting the water-shed of the Los Angeles river, amounting to about 350 square miles, and that in the said tract of land, part of the Los Felis and San Rafael ranchos, as well as in other lands lying upon both sides of the Los Angeles river and stretching far to the northward from said tract of land, an immense quantity of water is percolating through the soil and belongs

as your orators are informed and believe, and therefore allege, to the owners of the said soil.

IX.

Your orators further state and show that in 1888 the Crystal Springs Land and Water Company, having before that time acquired the title of the Los Angeles City Water Company to the said 4.9 acres of land, part of the Crystal Springs tract, and also of the rights to develop water on the Los Felis rancho, acquired by the said Los Angeles City Water Company, from G. J. Griffith, and also having acquired the said tract of the San Rafael rancho hereinbefore mentioned and referred to, excavated a ditch or tunnel from the Crystal springs, in the said Crystal Springs tract, in a southeasterly direction to a certain point known as the gate-house, and excavated a tunnel from the said gate-house northerly through a portion of the said Los Felis rancho and said San Rafael rancho, and in the said excavations laid water pipe, and by means of the said excavations gathered together of the percolating waters of the said lands a large amount, to wit, seven hundred inches, of water, measured under a four-inch pressure, and by means of the said pipes, so laid, conducted the waters to the said gate-house, at which point the waters from the said pipes to the Crystal Springs tract and also from the said other pipes united together and are thence conveyed through pipes to the city of Los Angeles for the purpose of furnishing the inhabitants of the said city with water for domestic uses and also furnishing the said City of Los Angeles, the defendant herein, with water for flushing sewers, extinguishing fires, sprinkling the streets, and other public uses.

X.

Your orators further state and show that all of the said development was done upon lands either belonging to the said Crystal Springs Land and Water Company or through the lands upon which the right to make such development had been granted by the said G. J. Griffith, the owner of the said lands; and, by reason of the said grant and the ownership of the said lands and the development of the said waters by means of the said excavations and the pipes laid therein, the said Crystal Springs Land and Water Company became and ever since has been the owner of the said waters and water pipes and still is the owner thereof, subject to the rights of the said S. G. Murphy, one of the plaintiffs herein.

XI.

Your orators further state and show that the said Los Angeles City Water Company is a corporation duly organized under the laws of the State of California and was organized prior to the year 1870, and was organized for the purpose of furnishing water to the inhabitants of the city of Los Angeles for domestic uses and other purposes, and of supplying the said city of Los Angeles with water for sprinkling streets and the other purposes hereinbefore mentioned.

XII.

Your orators further state and show that the said Crystal Springs Land and Water Company is the owner in fee of the said pipes and the said percolating waters so developed, and by and through its tenants and agents is in the possession thereof, but subject to the rights of the said S. G. Murphy.

11 XIII.

And your orators further state and show that on the 1st day of August, 1890, the said Crystal Springs Land and Water Company executed to S. G. Murphy and L. C. Goodwin a certain instrument whereby it granted, bargained, sold, assigned, transferred, and set over to the said S. G. Murphy and L. C. Goodwin and to the survivor of them and their successors in the trusts created and declared in said instrument all and singular the franchises, works, privileges, effects, and property, real and personal, of every kind owned or possessed by the said Crystal Springs Land and Water Company, including its machinery, pipes, reservoirs, ditches, materials, contracts, lands, water, buildings, rights of way, and also all the property which it might thereafter acquire, to have and to hold to the said S. G. Murphy and L. C. Goodwin and the survivor of them or his or their successors duly appointed, in trust for the benefit and security of the holders of certain bonds issued by the Crystal Springs Land and Water Company, to wit, five hundred bonds of the par value of one thousand dollars each, bearing date August 1st, 1890, numbered from one to five hundred, both inclusive, payable ten years after their date and bearing interest at the rate of six per cent. per annum, the interest to be paid semi-annually according to the coupons attached, and granting to the said trustees the right to take possession, in case default should be made in the payment of the interest or of the bonds, and after such default had continued for ninety days after demand of payment, and to hold, use, and operate the same by their superintendents, managers, or servants, and conduct the business and to take the rents and profits and apply the same to the payment of the expenses of operating the same, making repairs, replacements, alterations, additions, and improvements, and the payment of taxes, assessments, charges, and liens upon the property which might be paramount to the said conveyance, and then to apply the moneys to the payment of the said bonds, principal and interest, and under the conditions prescribed in the said deed to sell the said property for the payment of the said debt, and which said instrument is still in full force, and the said debt is unpaid, but no default has yet been made in the payment of the interest as provided therein.

12

XIV.

And your orators further state and show that since the execution of the said instrument one of the said trustees, to wit, L. C. Goodwin, died at the county of Los Angeles and no successor in the said trust has ever been appointed.

XV.

And your orators further show upon information and belief that under the laws of Spain and Mexico, the grantees of the said grants made by the Spanish and Mexican governments of the said Ranchos San Rafael and Los Felis, the waters percolating in the soil thereof passed with the said grants and became the property of the owner of said lands as part and parcel of said lands, and your orators' claim in and to said waters so collected together by means of the said excavations and the said pipes and so by them conducted to the works of said plaintiffs herein and distributed by their agents and tenants to the people of the city of Los Angeles and to the said city for the uses and purposes aforesaid is derived from, through, and under the said grants made by the said Spanish and Mexican governments and the confirmation thereof by the United States authorities and the patents issued by the United States, as hereinbefore alleged, and the said rights of your orators are pro-
13 tected by the treaty of Guadalupe Hidalgo between the United States and the Republic of Mexico, and the said title to said water and rights to the use thereof were confirmed by the authorities of the United States by and through the proceedings aforesaid.

XVI.

And your orators further state and show that there are, above the said lands of the Los Felis and San Rafael ranchos, other tracts of land acquired from the Mexican or Spanish governments, through which the said stream known as the Los Angeles river flows, and other lands both north and south of the patent boundaries of the city of Los Angeles which became vested in the United States upon the acquisition of the State of California from the Mexican government and through which the said Los Angeles river flows, and which have since said time been acquired by private parties from the United States Government and patents issued therefor, and that as to the said public lands and private grants the United States and the holders of the said private grants were, as your orators are informed and believe, riparian owners and entitled to the use of the waters of the said stream as such, and as owners of the said lands were entitled to the waters percolating in the soil, whether ultimately finding their way into the Los Angeles river or not.

XVII.

Your orators further state and show that the said lands in which the said excavations were made in the said Los Felis and San Rafael ranchos by the Crystal Springs Land and Water Company, and in which said pipes were laid, *is* part of a large tract in the said ranchos comprising over five hundred acres of land, and extending in width from a quarter of a mile to three-quarters of a mile,
14 and that the said Los Angeles river and the bed thereof in its passage through the said tract of land, to wit, the said tract comprising over five hundred acres, does not at any place in said tract exceed in width one hundred feet.

XVIII.

Your orators further state that the said tract of land, being something over five hundred acres, contains a vast quantity of water, being saturated with percolating waters to a depth, as your orators are informed and believe, of more than one hundred feet, and the taking and diverting the said percolating waters to the extent to which they have been developed and diverted by the said Crystal Springs Land and Water Company, as aforesaid, does not in any manner affect or diminish the flow of the waters of the Los Angeles river as it is accustomed to flow upon the surface of the land, and no diminution of said stream is perceptible at any point below the said excavations and pipes or at any place within the limits of the city of Los Angeles, or at any other point.

XIX.

Your orators further state that the legislature of the State of California, on the 26th of March, 1874, passed an act entitled An act to amend the charter of the city of Los Angeles, to define its limits and rights, to enlarge its powers and provide for its more efficient government; by which said act, among other things, the said legislature of the State of California attempted to grant to the said city of Los Angeles certain rights, and by said act did declare that there was thereby granted to the said corporation called the city of Los Angeles, to be by it held and enjoyed in absolute ownership, the full, free, and exclusive right to all of the water flowing in the River Los Angeles at any point from its source or sources to the intersection of said river with the southern boundary of the said city, and also the right to develop, economize, use, and utilize all waters flowing beneath the surface in the bed of said river at any point or points between the points of termini therein above given, to wit, from the source or sources of the said river of Los Angeles to the intersection of said river with the southern boundary of said city; and for that purpose it was further declared that the powers to condemn property outside of the limits of said city given by the provisions of said act, in so far as the same related to the condemnation of the property in water for increasing the water supply of said city, were intended to be given and to be restricted to such sources of supply and to the rights therein and excepting and reserving from the operation of the said grant of the water flowing in said river, unless the same should be condemned and taken for public use, all vested private rights to the said water flowing upon the surface or beneath it in the bed of said river.

XX.

Your orators further state that afterwards, to wit, on the 1st day of April, 1876, an act was passed by the legislature of the State of California and approved by the governor of said State entitled An act to revise an act entitled An act to amend the charter of the city of Los Angeles, to define its limits and rights, to enlarge its powers

and provide for its more efficient government, approved March 26, A. D. 1874, and by which said last-mentioned act the legislature assumed to make to the city of Los Angeles a grant of the waters of the Los Angeles river and the right to develop, economize, use, and utilize all waters flowing beneath the surface in the bed of said river at any point or points between the source or sources
16 of said river and the southern boundary of the city, which said last-mentioned grant was given in the same terms as in the act of 1874 hereinbefore mentioned.

XXI.

Your orators further state that afterwards, to wit, in the month of March, 1878, the legislature of the State of California passed another act, which was approved on the 30th day of March, 1878, entitled An act to amend an act entitled An act to revise an act entitled An act to amend the charter of the city of Los Angeles, to define its limits and rights, to enlarge its powers and provide for its more efficient government, approved April 1st, 1876, and by which said act of March 30, 1878, the legislature again made the same grant to the city of Los Angeles as was contained in the act of 1874.

XXII.

Your orators further state and show that the said Crystal Springs Land and Water Company commenced the said excavations soon after its acquisition of its rights from the Los Angeles City Water Company in 1886, and continued the same and the laying of the said pipes, and the said pipes were completed and the said percolating waters collected together and conducted through the said pipes to the works theretofore belonging to the Los Angeles City Water Company for distribution in the city of Los Angeles to its inhabitants and to the municipality, as aforesaid, some time in the year 1890.

XXIII.

And your orators further state and show that the said city of Los Angeles claims that the said city, as the successor of the Mexican pueblo of Los Angeles, and by virtue of the laws of Mexico governing and regulating and fixing the rights of a pueblo to the
17 waters of streams flowing through the said pueblos, and by the said several acts of the legislature hereinbefore mentioned purporting to grant to the said city of Los Angeles the sole and exclusive right to the waters of the said Los Angeles river, which said stream is an innavigable stream flowing through the said city, is the sole and exclusive owner of all the waters flowing in the Los Angeles river from its sources to the southern boundary of said city and of the sole and exclusive right to develop waters percolating under the bed of the said river or elsewhere which flow into or become a part of the waters of the said Los Angeles river, and that the said Crystal Springs Land and Water Company made the said excavation and developed the said water without right, and that

the same belong to the said city of Los Angeles, and the said city of Los Angeles claims, as your orators are informed and believe, that the whole space between the bases of the mountains upon each side of the said Los Angeles river above the northern boundary of said city and including the said tract whereon said excavations were made by the Crystal Springs Land and Water Company, and said pipes laid, constitutes a portion of the bed of the Los Angeles river within the meaning of the said acts of the legislature of the State of California, and that all of the waters percolating in the said soil belong to the said city of Los Angeles, and that said city has the sole and exclusive right to develop the waters percolating in the said lands, under and by virtue of the said acts of the legislature aforesaid, and that the said development, made by the Crystal Springs Land and Water Company, as aforesaid, though made and done in lands belonging to the said Crystal Springs Land and Water Company or under a grant of the right to make such developments from the owners of said lands in the Ranchos San Rafael and Los Felis, were made without right, and that the said
18 waters so developed and concentrated and flowing in the said pipes belong to the city of Los Angeles, and that neither the said Crystal Springs Land and Water Company nor the said S. G. Murphy, trustee in the said deed of trust, has any right, title, or interest therein.

XXIV.

And your orators further state upon information and belief that all of the said claims made by the said city of Los Angeles are false and unfounded and without any right or foundation in law, and that the title of your orators, as hereinbefore set forth, to the said pipes and water flowing therein is good and valid. Yet, notwithstanding that the said claim on the part of the city of Los Angeles is unfounded, the said claim of said city has greatly impaired the market value of the property of your orators aforesaid and greatly impaired and diminished the value of the capital stock of the said Crystal Springs Land and Water Company, and impaired the security given for the payment of the bonds of the said Crystal Springs Land and Water Company and held by the said S. G. Murphy, trustee, as aforesaid, and thereby diminished the market value of the said bonds, and your orators have been otherwise greatly injured and damaged by the said false and unfounded claim of the said city of Los Angeles.

And your orators further state and show that the value of the said property in controversy herein, to wit, the said water and water rights, is greatly in excess of the sum of $2,000 and is of the value of more than one million of dollars.

To the end, therefore, that your orators may obtain relief in the premises in this honorable court, where alone adequate relief
19 can be afforded, they pray that the said city of Los Angeles may be required to answer the allegations of this bill, but not under oath, an answer under oath being waived, and that upon the final hearing of this cause it be decreed that the said plaintiffs

are the owners in fee of the said waters, water rights, and pipes, and of the right to take and use the same, and that the said defendant, The City of Los Angeles, has no right, title, or interest in the said property or any portion thereof, and that the said city be forever enjoined from asserting any claim to the said property or any part thereof.

And that your orators may obtain the relief prayed for and all such further or other relief as the nature of their case may require, may it please your honors to grant to your orators the writ of subpœna against the said city of Los Angeles.

S. M. WHITE AND
CHAPMAN & HENDRICK,
*Solicitors for Pl'ff-.*

UNITED STATES OF AMERICA, }
*District of California,* } *ss:*

At the city of Los Angeles, in the county of Los Angeles and district aforesaid, this 14th day of December, in the year 1893, personally appeared before me, Wm. M. Van Dyke, clerk & commissioner of U. S. circuit court, southern district of California, S. H. Mott, the secretary of said corporation, the Crystal Springs Land and Water Company, and made oath that the facts set forth in the foregoing bill so far as they purport to be stated as of his
20 own knowledge are true, and so far as they purport to be stated on information and belief he believes them to be true.

S. H. MOTT.

Subscribed and sworn to before me this 14th day of December, 1893.

WM. M. VAN DYKE,
[SEAL.] *Clerk & Commissioner of U. S. Circuit Court,*
*Southern District of California.*

(Endorsed:) No. 583. In the circuit court of the United States, ninth circuit, southern district of California. The Crystal Springs Land and Water Company *et al.*, plaintiffs, *vs.* The City of Los Angeles, defendant. Bill of complaint. Filed Dec. 14, 1893. Wm. M. Van Dyke, clerk. Chapman & Hendrick, attorneys for complainants.

21 UNITED STATES OF AMERICA:

Circuit Court of the United States, Ninth Circuit, Southern District of California. In Equity.

The President of the United States of America to the City of Los Angeles, Greeting:

You are hereby commanded that you be and appear in said circuit court of the United States aforesaid, at the court-room, in Los Angeles, on the 5th day of February, A. D. 1894, to answer a bill of complaint exhibited against you in said court by the Crystal

Springs Land and Water Company, a corporation organized under & in pursuance of the laws of the State of California, & having its principal place of business in the city of Los Angeles, county of Los Angeles, in said State, and S. G. Murphy, who is a citizen of the State of California, and to do and receive what the said court shall have considered in that behalf; and this you are not to omit under the penalty of five thousand dollars.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 14th day of December, in the year of our Lord one thousand eight hundred and [SEAL.] ninety-three, and of our Independence the one hundred and eighteenth.

WM. M. VAN DYKE, *Clerk.*

*Memorandum Pursuant to Rule* 12, *Supreme Court U. S.*

You are hereby required to enter your appearance in the
22 above suit on or before the first Monday of February next, at the clerk's office of said court, pursuant to said bill; otherwise the said bill will be taken *pro confesso.*

WM. M. VAN DYKE, *Clerk.*

UNITED STATES MARSHAL'S OFFICE,
SOUTHERN DISTRICT OF CALIFORNIA.

I hereby certify that I received the within writ on the 16th day of December, 1893, and personally served the same on the 16th day of December, 1893, by delivering to and leaving with F. G. Teed, as president of the *of the* council of The City of Los Angeles, said defendant named therein, personally, at the county of Los Angeles, in said district, a certified copy thereof.

Los Angeles, December 16th, 1893.

GEO. E. GARD,
*U. S. Marshal,*
By F. B. GOODRICH, *Deputy.*

(Endorsed:) No. 583. U. S. circuit court, ninth circuit, southern district of California. In equity. The Crystal Springs Land & Water Co. & S. G. Murphy *vs.* The City of Los Angeles. Subpœna. Filed Mar. 30, 1894. Wm. M. Van Dyke, clerk.

23 In the Circuit Court of the United States, Ninth Circuit, for the Southern District of California.

THE CRYSTAL SPRINGS LAND AND WATER COMPANY and S. G. MURPHY, Plaintiffs,
*vs.*
THE CITY OF LOS ANGELES, Defendant. } No. 583.

*Defendant's Demurrer and Plea to Plaintiffs' Bill.*

Now comes the defendant, The City of Los Angeles, and by protestation, not confessing all or any of the matters and things in said

complainants' bill contained to be true, and for demurrer and plea to said bill says—

That said defendant demurs to said bill:

I.

For the reason that this court has no jurisdiction of the subject-matter therein set forth.

II.

For the reason that said bill does not state facts sufficient to entitle plaintiffs to any relief against said defendant.

III.

For the reason that said bill is without equity.

And defendant by way of plea to said bill says—

That this court has no jurisdiction of the subject-matter set forth in said bill for the following reasons:

I.

That the matter in dispute does not arise under the Con-
24 stitution or laws of the United States or treaties made under their authority; that in said controversy the United States are neither plaintiffs or petitioners; that the controversy is not between citizens of different States nor between citizens of the same State claiming lands under grants of different States, nor between citizens of the State and foreign states, citizens, or subjects.

II.

That in the year 1893 the City of Los Angeles filed a complaint in the superior court of the State of California in and for the county of Los Angeles against The Crystal Springs Land and Water Company, the complainant herein, in which said complaint said city alleged:

1st. That the city was a municipal corporation existing under the laws of the State of California, and that the Crystal Springs Land and Water Company was a corporation organized under the laws of said State.

2nd. That the Los Angeles river is a small unnavigable stream of water which arises above the city of Los Angeles and flows through said city, the waters of which sink into the sand below the city's limits except in times of flood; that the city of Los Angeles is the absolute owner of all of the water of said river, together with all the waters of its sources, feeders, springs, and also all water flowing or percolating through or under its bed or banks; that the city of Los Angeles had ever since the year 1850 appropriated, claimed, and used for the use of its inhabitants, as well as for the use of the inhabitants living within the limits of the old pueblo of Los Angeles by means of zanjas, ditches, and canals, all of the water of the Los

Angeles river, and had ever since that time exercised full
25 and absolute control of all of said waters; that without the use and control of all of said waters the prosperity of the inhabitants of said city, as well as those within the old pueblo limits, would be threatened and destroyed.

3rd. That the defendant, The Crystal Springs Land and Water Company, disregarding the laws of the State and the ordinances and resolutions of said city and without any right or authority so to do, did, on the 7th of November, 1888, wrongfully and unlawfully divert from the waters of the Los Angeles river, its sources, feeders, springs, underground flow, and percolating waters, at a point above the north boundary of said city and upon the Los Feliz ranch, and appropriate for its own use water of said river to the amount of one thousand miners' inches per day, and has continuously from that time to the present time diverted for its own use said amount of water daily to the damage of plaintiff in the sum of $225,000.

4th. That plaintiff- further said that the defendant, unless restrained by an order of court, threatened to continue to divert and appropriate to its own use the waters of said river and of its sources, springs, and percolating waters, thereby causing said city and the inhabitants thereof great and irreparable injury; that plaintiff- then prayed judgment against the defendant in the sum of $225,000, and asked that said defendant be perpetually enjoined and restrained from appropriating or using any of the waters of the Los Angeles river, its sources, springs, or percolating waters, and for other proper relief.

5th. That said Crystal Springs Land and Water Company then submitted itself to the jurisdiction of said court and filed an answer therein whereby it denied each and all of the allegations of said complaint, including the title of the city to the waters of said
26 river, and alleged that while water was being taken through pipes which belonged to said defendant that the water was not water of the Los Angeles river, and that the water which was being thus taken through said pipes was not being taken by the Crystal Springs Land and Water Company, but by the Los Angeles City Water Company (the same corporation referred to in plaintiffs' bill herein); that said action afterwards came on for trial, at which time evidence was offered as to the title of the city to all of the waters of said river, and evidence was also offered in regard to the title of the Crystal Springs Land and Water Company to the land upon which its pipes were located and the land upon which it claimed the right to develop water, which land and water rights are the same to which complainants refer in their bill herein. Evidence was also offered as to whether the water which was running in said pipes (which is the same water which complainants claim and refer to in their bill herein) was water of the Los Angeles river, and the question of the title of the city to the waters of the river as well as the title of the Crystal Springs Land and Water Company and the water right it claims, as described in the bill herein, were submitted in that action, which action is now pending in said court.

That no application to remove said action to this court has been made by any one.

Wherefore the defendant herein says that this court has no jurisdiction of the subject-matters contained in complainants' bill, and defendant therefore asks that said bill be dismissed, and that it may recover its costs herein expended.

C. McFARLAND,
*Counsel for Defendant.*

27 UNITED STATES OF AMERICA, } ss:
*Southern District of California,* }

At the city of Los Angeles, in the county of Los Angeles, State of California and district aforesaid, this 30th day of March, A. D. 1894, personally appeared before me C. McFarland, who, first being sworn, says that he is an officer of the city of Los Angeles, to wit, the city attorney, and that the foregoing demurrer and plea of said city, and that neither of them, is interposed for delay, and that said plea is true in point of fact.

C. McFARLAND.

Subscribed and sworn to before me this 30th day of March, 1894.
[SEAL.] WM. M. VAN DYKE,
*Clerk & Commissioner of U. S. Circuit Court,*
*Southern District of California.*

I, C. McFarland, counsel for the defendant herein, hereby certify that the foregoing demurrer and plea and each of them is well founded in point of law.

C. McFARLAND.

(Endorsed:) No. 583. In the circuit court of the United States, southern district of California. Crystal Spring-Land & Water Company, plaintiff, *vs.* City of Los Angeles, defendant. Demurrer and plea. Filed Mar. 30, 1894. Wm. M. Van Dyke, clerk. C. McFarland, counsel for defendant.

28 At a stated term, to wit, the August term, A. D. 1895, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the southern district of California, held at the court-room, in the city of Los Angeles, on Thursday, the second day of January, in the year of our Lord one thousand eight hundred and ninety-six.

Present: The Honorable Olin Wellborn, district judge.

THE CRYSTAL SPRINGS LAND AND WATER COMPANY *et al.*,
Complainants,
*vs.*
THE CITY OF LOS ANGELES, Defendant. } No. 583.

This cause coming on this day to be argued on defendant's demurrer to complainants' bill of complaint, J. S. Chapman, Esq., appearing as counsel for complainants and J. R. Scott, Esq., appear-

ing as counsel for defendant, and said demurrer and defendant's plea having been argued in support thereof by J. R. Scott, Esq., of counsel, as aforesaid, for defendant, and by J. S. Chapman, Esq., of counsel for complainant, as aforesaid, in opposition thereto, and during his argument, at 12.30 o'clock p. m. a recess is taken until 2.30 o'clock p. m. of this day; and now, at the hour of 2.30 o'clock p. m., court having reconvened and counsel being present as before, and pursuant to the stipulation of counsel and by order of court first had and obtained, complainants' amendment to their bill of complaint having been filed herein, the demurrer and plea to the original bill stands as the demurrer and plea to the bill as amended; and said
29 demurrer and plea having been further argued in opposition thereto by J. S. Chapman, Esq., of counsel, as aforesaid, for complainants, and in support thereof, in reply, by J. R. Scott, Esq., of counsel, as aforesaid, for defendant, it is now ordered that said demurrer and plea be and they are submitted to the court for its consideration and decision upon said argument and upon briefs, complainants' brief being filed herewith, and defendant having ten (10) days in which to file his brief and complainants five (5) days in which to reply.

I, Wm. M. Van Dyke, clerk of the circuit court of the United States for the southern district of California, do hereby certify the foregoing to be a full, true, and correct copy of an original order made and entered by said court January 2nd, 1896, in the cause entitled The Crystal Springs Land and Water Company *et al.*, complainants, *vs.* The City of Los Angeles, defendant, No. 583, and now remaining of record therein.

Attest my hand and the seal of said circuit court this 12th day of July, A. D. 1897.

[SEAL.] WM. M. VAN DYKE, *Clerk.*

(Endorsed:) No. 583. U. S. circuit court, ninth circuit, southern district of California. The Crystal Springs Land and Water Company *et al. vs.* The City of Los Angeles. Certified copy of order allowing an amendment of the bill of complaint. Filed Jul- 12, 1897. Wm. M. Van Dyke, clerk.

30 In the Circuit Court of the United States, Ninth Circuit, for the Southern District of California.

THE CRYSTAL SPRINGS LAND AND WATER COMPANY and S. G. MURPHEY, Plaintiffs,
*vs.*
THE CITY OF LOS ANGELES, Defendant.
} No. 583.

The plaintiffs in this action, by leave of court and with consent of counsel, amend the bill filed herein by substituting for paragraph XXI the following:

Your orators further state that afterward, to wit, in the month of March, 1878, the legislature of the State of California passed another act, approved March 30th, 1878, and entitled "An act to amend an act entitled An act to revise an act entitled An act to amend the

charter of the city of Los Angeles, to define its limits and rights, to enlarge its powers and provide for its more efficient government, approved April 1st, 1876," whereby it was enacted by the said legislature of the State of California, among other things, that there was thereby granted to the said corporation, namely, the city of Los Angeles, to be by it held and enjoyed in absolute ownership, the full, free, and exclusive right to all the water flowing in the River Los Angeles at any points from its source or sources to the intersection of said river with the southern boundary of said city, and also the right to develop, economise, use, and utilize all waters flowing beneath the surface in the bed of said river at any
31 point or points between the points of termini therein given, to wit, from the sources of the said river to the southern boundary of the said city, but without the exceptions in favor of private rights that had been made in the said act of 1874.

WHITE & MONROE &
J. S. CHAPMAN,
*Att'y- for Pl'ff.*

(Endorsed:) No. 583. In the United States circuit court, ninth circuit, southern district of California. Crystal Springs L. & W. Co. *et al.*, plaintiffs, *vs.* City of Los Angeles, defendant. Amendment to complaint. Received copy of the within am'd'ts this 2 day of Jan'y 1896. W. E. Dunn, city att'y. Lee & Scott, of counsel, attorney-for def'ts. Filed Jan. 2, 1896. Wm. M. Van Dyke, clerk. Jno. S. Chapman, attorney for plaintiffs.

32 In the Circuit Court of the United States, Ninth Circuit, for the Southern District of California.

THE CRYSTAL SPRINGS LAND AND WATER COMPANY and S. G. MURPHY, Complainants,
*vs.*
THE CITY OF LOS ANGELES, Defendants.

*Defendant's Demurrer to Plaintiffs' Bill.*

This defendant, not confessing all or any of the matters in the bill of complaint, as amended, contained to be true as therein set forth, does demur to said amended bill, for that the same does not state such a case nor contain any matter of equity entitling the complainants to any relief against this defendant.

And this defendant, not confessing all or any of the matters and things in said bill of complaint, as amended, contained to be true as therein alleged, does further demur to said bill, and for cause thereof showeth that this court has no jurisdiction of this suit, nor of the subject-matter thereof, nor of the parties thereto.

Wherefore this defendant prays the judgment of the court whether it shall be compelled to further answer said amended bill, and further prays to be dismissed with its costs.

THE CITY OF LOS ANGELES,
By W. E. DUNN, *Its Solicitor.*

LEE & SCOTT, *Of Counsel.*

33 I, J. R. Scott, of counsel for the defendant in the above cause, do hereby certify that the foregoing demurrer to the amended bill of complaint is, in my opinion, well founded in law.

J. R. SCOTT.

UNITED STATES OF AMERICA,
*Southern District of California, County of Los Angeles.*

I, W. E. Dunn, an officer of the defendant, The City of Los Angeles, to wit, the city attorney of said city, being duly sworn, do say that the foregoing demurrer to the amended bill of complaint is not interposed for purposes of delay.

W. E. DUNN.

Subscribed and sworn to before me this 11th day of January, A. D. 1896.

[SEAL.] FRANCIS J. THOMAS,
*Notary Public in and for the County of Los Angeles, State of California.*

(Endorsed:) 583. U. S. circuit court. 9th circuit, southern dist. of Calif. Crystal Springs Land & Water Co. and S. G. Murphy *v.* City of Los Angeles. Defendant's demurrer to plaintiffs' bill. Service accepted this 11th day of Jan'y, 1896. White & Monroe & J. S. Chapman, att'ys for pl'ff-. Filed Jan. 11, 1896. Wm. M. Van Dyke, clerk.

34 At a stated term, to wit, the January term, A. D. 1896, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the southern district of California, held at the court-room, in the city of Los Angeles, on Monday, the third day of August, in the year of our Lord one thousand eight hundred and ninety-six.

Present: The Honorable Olin Wellborn, district judge.

THE CRYSTAL SPRINGS LAND AND WATER COMPANY and S. G. MURPHY, Complainants,
*vs.*
THE CITY OF LOS ANGELES, Defendant. } No. 583.

This cause having heretofore been submitted to the court for its consideration and decision upon defendant's demurrer to complainants' bill of complaint, and the court having duly considered the same and being fully advised in the premises, it is now, on this 3rd day of August, 1896, being a day in the January term, A. D. 1896, of said circuit court of the United States for the southern district of California, ordered that said demurrer be, and the same hereby is, overruled, and that defendant be assigned to answer said bill of complaint at the rule day in September next.

35 I, Wm. M. Van Dyke, clerk of the circuit court of the United States for the southern district of California, do hereby certify the foregoing to be a full, true, and correct copy of

an original order made and entered by said court August 3rd, 1896, in the cause entitled The Crystal Springs Land and Water Company and S. G. Murphy, complainants, *vs.* The City of Los Angeles, defendant, No. 583, and now remaining of record therein.

Attest my hand and the seal of said circuit court this 12th day of July, A. D. 1897.

[SEAL.] WM. M. VAN DYKE, *Clerk.*

(Endorsed:) No. 583. U. S. circuit court, ninth circuit, southern district of California. The Crystal Springs Land and Water Company *et al. vs.* The City of Los Angeles. Certified copy of order overruling defendant's demurrer. Filed Jul- 12, 1897. Wm. M. Van Dyke, clerk.

36 In the Circuit Court of the United States, Ninth Circuit, for the Southern District of California.

THE CRYSTAL SPRINGS LAND AND WATER COMPANY and S. G. MURPHY, Complainants,
*vs.*
THE CITY OF LOS ANGELES, Defendant.

The answer of The City of Los Angeles, defendant, to the bill of complaint of The Crystal Springs Land and Water Company and S. G. Murphy, complainants.

This defendant, now and at all times hereafter saving and reserving unto itself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainants' said bill of complaint contained, for answer thereto or unto so much thereof and such parts as this defendant is advised is or are material or necessary for it to make answer unto, this defendant, *for* answering, saith:

1. This defendant upon information and belief denies that by the decree of the district court of the United States for the southern district of California, mentioned in paragraph I of said bill, the court decreed that the lands of which confirmation was thereby made was known by the name of Los Felis or were the same lands granted to Maria Ignacia Verdugo, by Manuel Michelteren, governor of California, on the 22nd day of March, 1843, or were bounded on the south by the River Los Angeles, or that on the 18th day of
37 April, 1871, or at any other time than the 15th day of April, 1871, a patent was issued by the United States to the said Maria Ignacia Verdugo, giving or granting to her said Rancho Los Felis or any other land; but, on the contrary, this defendant alleges on information and belief that said lands were described in said decree as being bounded on the south by the river belonging to the former pueblo, but then city, of Los Angeles, and said patent was issued on the 15th day of April, 1871.

And, further answering, this defendant alleges on information and belief that the grant and patent mentioned in paragraph I of

said bill did not include any right to the waters of the Los Angeles river mentioned in said bill, whether surface or subterranean, but in and by said grant the exclusive right of and absolute ownership by the then pueblo of Los Angeles (the predecessor in interest of this defendant) to and of all of the waters, surface and subterranean of said river and to the use thereof were reserved to it and recognized by said grant, and a like right of and ownership by the mayor and common council of the city of Los Angeles (the successor of said pueblo and predecessor of this defendant) were also reserved to said mayor and common council and recognized by said patent.

And, further answering, this defendant alleges upon information and belief that said grant was in fact made to said Maria Ignacia Verdugo for pasturage of cattle and horses and not for agricultural purposes, and that it was not intended by said grant to give said grantee any right to the use of any of the waters, surface or subterranean, of said Los Angeles river.

2. This defendant upon information and belief denies that on the 29th day of October, 1784, or at any other time, a grant was made by Pedro Fajes, or any other person or officer, to Julio Verdugo and others, or to any other person or persons, of the
38 tract of land described in paragraph II of said bill, known as the San Rafael rancho, or any part thereof; but, on the contrary, this defendant alleges on information and belief that the alleged grant mentioned in said paragraph II was in fact only a license to pasture cattle and horses and did not pass any title whatever to the persons to whom said alleged grant was made or any of them, and that neither said license nor the patent mentioned in said paragraph included any right to the waters of said Los Angeles river, whether surface or subterranean, but in the said license the exclusive right of and absolute ownership by the then pueblo of Los Angeles (the predecessor in interest of this defendant) to and of all of the waters, surface or subterranean, of said river were reserved to it and recognized by said grant, and that a like right and ownership by this defendant was reserved to it and recognized by said patent.

3. This defendant admits that the mayor and common council of the city of Los Angeles filed their petition for confirmation of their title to the tract of land known as the pueblo lands of the former pueblo of Los Angeles, in the present State of California, and containing sixteen square leagues, and that its claim was in part founded on a Mexican grant to petitioners made on the 25th day of August, 1844, by the then governor of the department of the Californias, but this defendant alleged on information and belief that said grant was in confirmation (as to the four leagues hereinafter mentioned) of a former grant to said pueblo made in the year 1781, whereby, under the laws of the Kingdom of Spain, under which the present State of California was then subject, there became vested in said pueblo of Los Angeles (the predecessor in interest of this defendant) the title to the four square leagues of land de-
39 scribed in the patent mentioned in paragraph III of said bill,

and also the exclusive right to and absolute ownership of all of the waters of said Los Angeles river, surface and subterranean, and that said claim was also based on other grants to said pueblo of Los Angeles (the true name whereof was the pueblo of Nuestra Señora Reina de los Angeles) made by the Spanish and Mexican governments respectively in confirmation of said grant made in the year 1781, as aforesaid.

This defendant admits that on the 5th day of February, 1856, the board of land commissioners mentioned in paragraph III of said bill rendered a decree confirming the said claim of said mayor and common council of the city of Los Angeles to a part of said sixteen square leagues, to wit, four square leagues of land, and rejecting the said claim as to the remainder, and that an appeal was taken, as alleged in said paragraph III, and that said appeal was dismissed, as alleged in said paragraph III, and said mayor and common council of the city of Los Angeles were permitted to proceed under said decision of said commissioners as under a final decree; and that thereafter the claim of said mayor and common council was surveyed, as alleged in said paragraph III; and that thereafter a patent was duly issued by the United States, as alleged in said paragraph III; and that said four square leagues are bounded in part on the north by said two ranchos of Los Felis and San Rafael; but this defendant alleges that another patent was issued by the United States to said mayor and common council on the 4th day of August, 1875, for said four square leagues.

4. This defendant admits that the Los Angeles river mentioned in paragraph IV of said bill in part rises in the mountains to the north of said Los Angeles river and the lands patented to the mayor and common council of the city of Los Angeles, as aforesaid, and to the north of said Los Felis and San Rafael ranchos, but this defendant alleges that said river also in part rises at many other places above said city of Los Angeles and above said Ranchos San Rafael and Los Felis.

This defendant admits that said river originally formed a common boundary of said two ranchos for a considerable distance, but alleges that said river does not now and has not for many years formed such common boundary.

This defendant admits that said Los Angeles river flows into the city of Los Angeles and the lands described in said patent to the mayor and common council of the city of Los Angeles at or near the middle point of the northern boundary of said city, and flows in a southerly direction through said city of Los Angeles.

5. This defendant has no information upon the subject sufficient to enable it to answer the allegations in said bill in reference thereto, and it therefore denies, that the Crystal Springs Land and Water Company is or ever was the owner of the tract of land particularly described in paragraph V of said bill, or of any part thereof, or of any interest therein.

6. This defendant has no information upon the subject sufficient to enable it to answer the allegations of said bill in reference thereto, and it therefore denies, that on the 14th day of June, 1886, or at any

other time subsequently, G. J. Griffith, named in paragraph VI of said bill, was the owner of the 4,900 acres of said Rancho Los Felis mentioned in said paragraph, or of any part thereof, or of any interest therein, or that he had then derived his title by or through the alleged patent mentioned in said paragraph; or that said G. J. Griffith or any other person, on or prior to the 14th day of June, 1886, or at any other time, conveyed to the Los Angeles City Water
41 Company the right to develop water upon all that part of said Rancho Los Felis belonging to him, particularly described in said paragraph VI as having been conveyed to said G. J. Griffith by the Los Angeles City Water Company, or any part thereof, or on that other portion of said Rancho Los Felis bounded on the northwest by the southeasterly boundary of the Crystal Springs tract and particularly described in said paragraph VI, or any part thereof; or that said G. J. Griffith afterwards or at any other time granted to the Los Angeles City Water Company the right to develop water upon other portions of said Rancho Los Felis and upon which and in which the pipes mentioned in said paragraph were laid, or upon any other land, or that all or any one of the alleged grants of the right to develop water mentioned in said paragraph was upon tracts which were part of said Los Felis rancho, referred to in said bill as water-bearing lands.

7. This defendant has no information upon the subject sufficient to enable it to answer the allegations of said bill in reference thereto, and it therefore denies, that long prior to the commencement of this suit or at any other time the Crystal Springs Land and Water Company acquired the title to the tract of land mentioned in paragraph VII of said bill, or that said company ever since or at any time held or still holds or owns the said tract of land or any part thereof, or that the pipes mentioned in said paragraph are laid in said tract.

8. This defendant denies that the Los Angeles river valley mentioned in paragraph VIII of said bill varies in width from about a mile to two or three miles, but, on the contrary, alleges on information and belief that such width varies from about one-fourth of a mile to twenty miles.

42 This defendant has no information upon the subject sufficient to enable it to answer the allegations of said bill in reference thereto, and it therefore denies, that upon said Los Felis and San Rafael ranchos, or on either of said ranchos, there is a large or other body of land, containing about — acres or any other area, in which a large or other amount of water is percolating, or that such water is supplied by the rainfall upon an immense or other watershed; or that in the tract of land mentioned in paragraph VIII or in the other lands mentioned therein as lying upon both sides of the Los Angeles river, or in any other land mentioned in said bill, there is an immense or other quantity of water percolating through the soil; or that any of the water mentioned in said paragraph VIII belongs to the owners of the soil in which such waters are located.

And, further answering, this defendant alleges that all of the waters mentioned in said paragraph VIII are running waters and form part of the subterranean stream of said Los Angeles river, and that

this defendant has the exclusive right to the same as part of the waters of said Los Angeles river.

9. This defendant has no information upon the subject sufficient to enable it to answer the allegations of said bill in reference thereto, and it therefore denies, that the Crystal Springs Land and Water Company had, before the year 1888 or at any other time, any of the rights to develop water on the Los Felis rancho mentioned in paragraph IX of said bill, or any other right to develop water, or had acquired the tract of land in the San Rafael rancho mentioned in said paragraph or any part thereof; or that said company, in the year 1888 or at any other time, excavated a ditch or tunnel from the Crystal springs in the Crystal Springs tract mentioned in
43 said paragraph, or excavated a tunnel from the gatehouse mentioned in said paragraph, or excavated any other ditch or tunnel; or that in the excavations mentioned in said paragraph or any of them, or in any other excavation, said Crystal Springs Land and Water Company laid the water pipe mentioned in said paragraph or any other pipe.

This defendant denies that said Crystal Springs Land and Water Company or any other corporation or person, by means of the excavations mentioned in said paragraph IX, or by any other means whatsoever, or at all, gathered together or obtained a large or other amount, or 700 inches, or any other quantity, of percolating waters in the lands mentioned in said paragraph or elsewhere, or any other percolating water.

And, further answering, this defendant alleges that all of the waters mentioned in said paragraph IX are and always were running waters and no part thereof is or ever was percolating water, but all of said waters are part of said Los Angeles river and belong to this defendant as part of said river, and that the pipes, ditches, and tunnels mentioned in said paragraph were run and made for the purpose of tapping said Los Angeles river and of diverting the water therefrom; and that said pipes, ditches, and tunnels had in fact diverted and still divert water from said Los Angeles river to the extent of all the waters in said pipes, ditches, and tunnels, and do not gather together or drain or carry any percolating water whatever.

10. This defendant has no information upon the subject sufficient to enable it to answer the allegations of said bill in reference thereto, and it therefore denies, that the alleged development mentioned in said paragraph X of said bill was made upon lands belong-
44 ing to the Crystal Springs Land and Water Company or upon other lands whereon the right to make such development had been granted by G. J. Griffith, named in said paragraph, or that the lands alleged in said paragraph to belong to said company or any part thereof ever did belong to said company, or that the lands alleged in said paragraph to be owned by G. J. Griffith or any part thereof *was* in fact ever owned by said Griffith subsequently to the 13th day of June, 1886, or that any right to make any of the developments mentioned in said paragraph or any other development was ever granted by said Griffith to said Crystal Springs

Land and Water Company or to said Los Angeles City Water Company.

This defendant denies that by reason of the alleged grant, ownership, or development mentioned in said paragraph, or by reason of any other grant, ownership, or development, or otherwise, or at all, the said Crystal Springs Land and Water Company ever became, or ever since has been, or still is, or ever was, the owner of the waters mentioned in said paragraph or of any part thereof, either subject to the rights of *S. G.* Griffith, named in said paragraph, or of S. G. Murphy, or of any other person, or at all.

This defendant has no information upon the subject sufficient to enable it to answer the allegations of said bill in reference thereto, and it therefore denies, that the Crystal Springs Land and Water Company became, upon the making of the alleged development mentioned in said paragraph, or ever since has been, or still is, or ever was, the owner of the water pipes mentioned in said paragraph or any part thereof, either subject to the rights of said G. J. Griffith, or of S. G. Murphy, or of any other person, or at all.

11. This defendant denies that the Los Angeles City Water
45 Company mentioned in paragraph XI of said bill was organized for any purpose except to supply the inhabitants of said city of Los Angeles with water for domestic purposes, and to conduct the same into and distribute the same through the streets and alleys of said city by means of pipes, tubes, hydrants, flumes, ditches, wheels, reservoirs, pumps, or other machinery, said water to be taken from the Los Angeles river or the zanjas or branches thereof, or springs forming the same, or from such other sources of supply as said corporation might find convenient and economical, and to make certain improvements, and to sell and distribute water to the inhabitants of said city for domestic purposes, under the terms of a contract stated in the certificate of incorporation of said Los Angeles City Water Company to have been made with the mayor and common council of said city by John S. Griffin, Prudent Beaudry, and Solomon Lazard, bearing date July 20, 1868.

12. This defendant denies that the Crystal Springs Land and Water Company is or ever was the owner in fee or otherwise of the waters mentioned in paragraph XII of said bill or of any part thereof or of any interest therein, either subject to the rights of said S. G. Murphy, or any other person, or at all.

This defendant has no information sufficient to enable it to answer the allegations of said bill in reference thereto, and it therefore denies, that the Crystal Springs Land and Water Company, by or through its tenants and agents or otherwise, is in possession of the pipes or waters mentioned in said paragraph XII or of any part thereof, or that said Crystal Springs Land and Water Company is the owner in fee or otherwise of the pipes mentioned in said paragraph, or of any part thereof, either subject to the rights of said S. G. Murphy, or of any other person, or at all.

46 13. This defendant has no information upon the subject sufficient to enable it to answer the allegations of said bill in reference thereto, and it therefore denies, that the bonds mentioned

in paragraph XIII of said bill or any one of said bonds was ever issued by said Crystal Springs Land and Water Company, or was ever held by any person or corporation, or that the deed of trust mentioned in said paragraph is still or ever was in full or other force, or that the debt mentioned in said paragraph or any part thereof is unpaid.

14. This defendant denies upon information and belief that under the laws of Spain and Mexico or any other laws or in any other way the waters percolating in the soil of the Ranchos San Rafael and Los Felis, mentioned in paragraph XV of said bill, or any part thereof passed with the grants mentioned in said paragraph or either of them, or with any other grant or grants or at all, or became the property of the owners of said lands or any part thereof as part or parcel of said lands or any part thereof or at all, or that the claim of the complainants herein in or to the waters alleged in said paragraph to have been collected together by means of the excavations and pipes mentioned in said paragraph is derived from, through, or under the grants and confirmation thereof and patents mentioned in said paragraph or either of them, or from, through, or under any other grant, confirmation, or patent, or at all, or that any of the rights of complainants mentioned in said paragraph, or of either of them, or any other rights of complainants, are protected by the treaty mentioned in said paragraph, or that the title to the water or the rights to the use thereof mentioned in said paragraph, or to any part thereof, were confirmed by the authorities of the United States by or through the proceedings men-
47 tioned in said paragraph or any other proceedings or at all.

15. This defendant upon information and belief denies that the tracts of land alleged in paragraph XVI of said bill to have been acquired from the Mexican or Spanish governments or any of them or any part thereof ever became vested in the United States upon the acquisition of the State of California from the Mexican government or at any other time or at all, or that the United States and the holders of the private grants mentioned in said paragraph or any of them or any other person or corporation, except this defendant and its predecessors, were or was riparian owners or owner or entitled to the use of the waters of said Los Angeles river or any part thereof as such riparian owners or owner or otherwise, or that as owners or owner of said land or otherwise the United States and said holders of said private grants or any of them or any other person or corporation, except this defendant and the municipal corporations which were its predecessors, were or was entitled to the waters percolating in the soil which found their way into said Los Angeles river, or any part thereof.

And, further answering, this defendant alleges upon information and belief that under the laws of Spain, and also under the laws of Mexico, in force at all the times when said countries respectively had jurisdiction over the territory in the present State of California and when said territory belonged to said countries respectively, ever since the foundation of said pueblo of Los Angeles, in the present State of California, in the year 1781, all of the waters which

found their way into the stream, surface or subterranean, of said Los Angeles river, whether such waters were percolating waters or flowing in well-defined channels, were part of the waters of said Los Angeles river, and that under said laws the owners of
48 the soil wherein said waters were moving had no right to intercept the same or to prevent them from finding their way into said Los Angeles river, and that during all of said times, up to the incorporation of the predecessor of this defendant by the statute of the legislature of the State of California passed on the 4th day of April, 1850, and entitled "An act to incorporate the city of Los Angeles," said pueblo of Los Angeles had the exclusive right to and the absolute ownership of all of the waters of said Los Angeles river, both surface and subterranean, and including all of the waters percolating in the soil which ultimately found their way into said river, and that ever since the passage of said act of the legislature this defendant and the municipal corporations which were its predecessors have been the owner- of all of said waters and entitled to the exclusive use of the same.

16. This defendant has no information upon the subject sufficient to enable it to answer the allegations of said bill in reference thereto, and it therefore denies, that the lands in the Ranchos Los Felis and San Rafael mentioned in paragraph XVII of said bill are part of a larger or other tract in said ranchos comprising over 500 acres of land or any other quantity of land, or extending in width from one-fourth of a mile, or any other distance, to three-fourths of a mile, or any other distance, or that said Los Angeles river and the bed thereof, in its passage through said tract of land, does not at any place in said tract exceed the width of 100 feet, or that said river or its bed, in its passage through said tract of land, does not exceed the whole width of said tract.

17. This defendant has no information upon the subject sufficient to enable it to answer the allegations of said bill in reference
49 thereto, and it therefore denies, that the tract of land mentioned in paragraph XVIII of said bill contains a vast quantity of water or any water except the subterranean waters of said Los Angeles river.

This defendant denies upon information and belief that said tract of land or any part thereof is saturated with percolating waters to the depth of 100 feet or to any other depth, or with any other waters to any depth exceeding ten feet, or that any part of said tract of land except that bordering on the surface stream of said river and within the banks or bed of said river is saturated with or contains any water; and this defendant alleges upon information and belief that all of the waters in said tract are flowing waters and part of the surface and subterranean stream of said Los Angeles river.

This defendant upon information and belief denies that the taking and diverting of the waters mentioned in said paragraph, to the extent that they are alleged in said paragraph to have been developed and diverted by said Crystal Springs Land and Water Company, do not in any manner affect or diminish the flow of the water of said Los Angeles river as it is accustomed to flow upon the surface

of the land, or that no diminution of said stream is perceptible at any point below the excavations and pipes mentioned in said paragraph, or at any other place within the limits of said city of Los Angeles, or at any other point; but, on the contrary, this defendant alleges upon information and belief that the effect of the taking and diverting of the water mentioned in said paragraph is to diminish the water of the surface stream of said Los Angeles river below said excavations and pipes and above the city of Los Angeles to the extent of the amount of water which is so taken and diverted, and that the diminution of the surface stream of said river is perceptible to that extent above and within the limits of said city.

18. This defendant admits the passage of the act of the legislature mentioned in paragraph XIX of said bill, but denies that there was thereby intended to be granted to the city of Los Angeles (the predecessor of this defendant) any right, if any, to the water flowing in said Los Angeles river, or to develop, economize, use, or utilize all or any waters flowing beneath the surface in the bed of said river which was then vested in said Los Angeles City Water Company, or in its predecessor in interest, or in the predecessor in interest of said Crystal Springs Land and Water Company, or in any private individual or corporation.

19. This defendant admits the passage of the act of the legislature mentioned in paragraph XX of said bill, but denies that there was thereby intended to be granted to the city of Los Angeles (the predecessor of this defendant) any right, if any, to the water flowing in said Los Angeles river, or to develop, economize, use, or utilize all or any waters flowing beneath the surface in the bed of said river, which was then vested in the Los Angeles City Water Company, or in its predecessor in interest, or in the predecessor in interest of said Crystal Springs Land and Water Company, or in any private individual or corporation.

20. This defendant admits the passage of the act of the legislature mentioned in paragraph XXI of said bill, but denies that there was thereby intended to be granted to the city of Los Angeles (the predecessor of this defendant) any right to the water flowing in said Los Angeles river, or to develop, economize, use, or utilize all or any waters flowing beneath the surface in the bed of said river, which was then vested in the Los Angeles City Water Company, or in its predecessor in interest, or in the predecessor in interest of said Crystal Springs Land and Water Company, or in any private individual or corporation.

And, further answering, this defendant alleges that it was not stated nor intended in said last-mentioned act of the legislature that the grant therein purported to be made of the right to the water flowing in said Los Angeles river and of the right to develop, economize, use, and utilize all waters flowing beneath the surface in the bed of said river should divest any private person or corporation of any vested private rights to the water flowing upon the surface or beneath it in the bed of said river.

21. This defendant has no information upon the subject sufficient to enable it to answer the allegations of said bill in reference thereto,

and it therefore denies, that the Crystal Springs Land and Water Company commenced the excavations mentioned in paragraph XXII of said bill, or any part thereof, or any other excavations or excavation, soon after its alleged acquisition of its alleged rights from the Los Angeles City Water Company or at any other time, or continued the same or the laying of the pipes mentioned in said paragraph or any other pipes or conduits, or that said pipes or any part thereof *was* completed, or the waters mentioned in said paragraph or any other waters were collected together or conducted through the said pipes or any other pipes to the works theretofore belonging to the Los Angeles City Water Company, or to any other works, for distribution in the city of Los Angeles to its inhabitants and to the municipality, or for any other purpose, some time in the year 1889, or before the year 1892, or after the year 1886.

22. This defendant admits that it claims as the successor
52 of the Mexican pueblo of Los Angeles, and by virtue of the laws of Mexico governing and regulating and fixing the rights of pueblos to the waters of streams flowing through said pueblos, and by the said several acts of the legislature mentioned in said bill purporting to grant to said city of Los Angeles the sole and exclusive right to the waters of said river; that this defendant is the sole and exclusive owner of all of the waters flowing in said Los Angeles river from its sources to the southern boundary of said city, and of the sole and exclusive right to develop water- percolating under the bed of said river or elsewhere which flow into and become a part of the waters of said Los Angeles river; but this defendant denies that said sources of title are the only sources of title of this defendant to said rights, but, on the contrary, alleges that it also claims said rights under the laws of Spain governing, regulating, and fixing the right of pueblos to the waters of streams flowing through said pueblos or used by such pueblos, and under various grants to its predecessor, the said pueblo of Los Angeles, by the Spanish and Mexican governments, and also by long and continued user and possession of said river and the waters thereof for a period of more than 100 years, and by various grants from private individuals, and by virtue of various judgments and decrees of courts of competent jurisdiction, and also by virtue of its ownership of the land through which said river flows in passing through said four square leagues patented to said mayor and common council of the city of Los Angeles.

And, further answering, this defendant denies that it claims that said last-mentioned acts of the legislature or any one or more of them granted to the city of Los Angeles (the predecessor of this defendant) any vested private right, if any, to any water flowing or being upon the surface or beneath it in the bed of said Los Angeles river,
53 or any water or right whatsoever, if any, which was at the time of the passage of said acts of the legislature vested in said Los Angeles City Water Company or its predecessor in interest or in the predecessor in interest of said Crystal Springs Land and Water Company; but, on the contrary, this defendant disclaims having acquired under any of said acts of the legislature any right,

if any, to the water flowing upon the surface or beneath it in the bed of said river, or any other water or right whatsoever, if any, which was at the time of the passage of said acts vested in the said Los Angeles City Water Company or its predecessor in interest or in the predecessor in interest of said Crystal Springs Land and Water Company or in any private individual or corporation; and this defendant denies that it claims or ever claimed, under or by virtue of said acts of the legislature or any of them, the right to develop waters percolating in the bed of said river or elsewhere without having first obtained the right of entering upon the land to so develop from the owner of the soil where such development should be made, either by grant from such owner or by condemnation of such right and making compensation to said owner therefor or otherwise.

And, further answering, this defendant denies that it claims or ever claimed that there was granted by said acts of the legislature or any of them to the city of Los Angeles (the predecessor of this defendant) any right, if any, to develop waters percolating under the bed of said Los Angeles river or elsewhere which was at the time of the passage of said acts vested in any private individual or corporation or in said Los Angeles City Water Company or its predecessor in interest, or in the predecessor in interest of the said Crystal Springs Land and Water Company; and this defendant disclaims that
54 said acts of the legislature or any one or more of them had the effect of granting to this defendant any right, if any, to develop water percolating in the bed of said Los Angeles river or elsewhere which was at the time of the passage of said acts vested in any private person or corporation or in said Los Angeles City Water Company or its predecessor in interest or in the predecessor in interest of said Crystal Springs Land and Water Company.

This defendant admits that it claims that the excavations alleged in the bill of complaint to have been made by the Crystal Springs Land and Water Company were all made without right, and that all of the waters alleged in said bill of complaint to have been collected or brought into said excavations or caused to flow therein were taken and diverted from said Los Angeles river without right, and that all of said waters belong to this defendant, and that this defendant also claims that the whole space between the bases of the mountains upon each side of said Los Angeles river above the northern boundary of said city, and including the tract of land mentioned in paragraph XXIII of said bill whereon said excavations are alleged in said paragraph to have been made by said Crystal Springs Land and Water Company and whereon the pipes mentioned in said paragraph are alleged therein to have been laid, constitute a portion of the bed of said Los Angeles river, so far as the waters, surface and subterranean, of said river flow in said space and tract, within the meaning of the acts of the legislature mentioned in said bill, and that all of the waters percolating into said soil which eventually find their way into the stream, surface or subterranean, of said Los Angeles river above the southern line of the four leagues alleged in said bill to

have been patented to said mayor and common council of the
55 city of Los Angeles by the United States belong to this defendant, and that this defendant has the sole and exclusive right to develop the said water-percolating in said lands which eventually find their way into said Los Angeles river above the southern boundary of said four leagues, after this defendant shall have acquired the right to enter upon the land where such development may be made from the owner of the soil by grant or by condemnation thereof and compensation made by this defendant to said owner or otherwise.

This defendant denies that it claims, under or by virtue of said acts of the legislature or any of them or any other act of said legislature, the right, if any, to develop the waters alleged to be percolating in the land mentioned in said paragraph XXIII, which was at the passage of said acts vested in any private individual or corporation, or which was at the passage of said acts vested in said Los Angeles City Water Company or its predecessor in interest or in the predecessor in interest of said Crystal Springs Land and Water Company, and which has not since been acquired by this defendant other than by said acts of the legislature, and this defendant disclaims having acquired any such right under or by virtue of said acts of the legislature or any of them.

This defendant admits that it claims that the pretended development alleged in said paragraph XXIII to have been made by said Crystal Springs Land and Water Company was made without right, and that the waters mentioned in said paragraph and alleged therein to have been developed and concentrated and to be flowing in the pipes mentioned in said paragraph belong to this defendant, and also that neither the said Crystal Springs Land and Water Company nor the said S. G. Murphy, trustee, has any right, title, or interest therein.

56 23. This defendant denies that all of the claims of this defendant mentioned in paragraph XXIV of said bill are or that any one of said claims is false or unfounded or without right or foundation in law, or that the title of complainants or of either of them set forth in said bill to the waters mentioned in said paragraph or any part thereof is or ever was good or valid.

This defendant has no information upon the subject sufficient to enable it to answer the allegations of said bill in reference thereto, and it therefore denies, that the title of complainants or of either of them to said pipes or any part thereof is good or valid.

This defendant denies that the claim of this defendant mentioned in said paragraph or any other claim of this defendant has greatly or otherwise impaired the market value of any property of said complainants or of either of them, or has greatly or otherwise impaired or diminished the value of the capital stock of said Crystal Springs Land and Water Company, or impaired the security given for the payment of the bonds alleged in said paragraph to be held by said S. G. Murphy, trustee, or diminished the market value of said bonds, or that said complainants or either of them has ever been otherwise greatly or at all injured or damaged by the claim

of this defendant mentioned in said paragraph; but, on the contrary, this defendant alleges that the said complainants well know that they never had any right, title, or interest in or to any of the waters mentioned in said bill, but that the same have always belonged to this defendant and are a part of the waters of said Los Angeles river.

24. And, further answering, this defendant alleges on information and belief that in the year 1781 the pueblo of Los An-
57 geles was founded on the four square leagues mentioned in said bill of complaint as having been patented to said mayor and common council of the city of Los Angeles by the United States.

That the present State of California then belonged to and was subject to the jurisdiction of the Kingdom of Spain, and by virtue of the laws of Spain, which were then extended over the present State of California, the said pueblo of Los Angeles, as a municipal corporation, upon its said foundation became vested with the sole and exclusive right to and absolute ownership of all of the waters of said Los Angeles river, whether flowing above or beneath the bed of said river, and with the right to the sole and exclusive use of all of said waters of said river in perpetuity.

That said pueblo of Los Angeles continued to exist as such pueblo under the laws of said Kingdom of Spain until the acquisition of the territory now comprised in the present State of California by the Republic of Mexico, from which time and until the acquisition of said State of California by the United States of America said territory now comprising the State of California belonged to and was subject to the jurisdiction of said Republic of Mexico.

That during all of said time when the present State of California belonged to said Republic of Mexico, as aforesaid, said pueblo of Los Angeles continued to exist as such pueblo under the laws of said Republic.

That from the time of the acquisition of the present State of California by the United States of America up to the incorporation of said pueblo as a city by the said act of the legislature of said State passed on the 4th day of April, 1850, entitled "An act to in-
58 corporate the city of Los Angeles," said pueblo still continued to exist as a pueblo under the municipal laws of said Republic of Mexico, except as modified by the laws of the United States of America and of said State of California after said acquisition of said State by the United States.

That during the time that the present State of California belonged to said Republic of Mexico, as aforesaid, said pueblo was by virtue of the laws of said Republic vested with the sole and exclusive right to and absolute ownership of all of the waters of said Los Angeles river, whether flowing above or beneath the bed of said river, and with the right to the sole and exclusive use of all of said waters of said river in perpetuity.

That from the time of the foundation of said pueblo, in the year 1781, as aforesaid, up to the incorporation of said pueblo as a city by said act of the legislature passed April 4th, 1850, said pueblo, by its municipal authorities and by its servants, agents, and officers,

continuously, exclusively, and adversely to the whole world, except as hereinafter otherwise alleged, used all of the waters of said Los Angeles river for the irrigation of the said four square leagues and for other public municipal purposes of said pueblo and its inhabitants, claiming the right so to do by virtue of its said ownership of said waters and of its said right to use the same, and that ever since said incorporation this defendant and its predecessors have (except as hereinafter otherwise alleged) continuously, exclusively, and adversely to the whole world used said waters for said purposes under said claim.

That during the time that said territory comprising the present State of California was subject to the dominion of Spain, as aforesaid, divers grants were made by the said government of
59 Spain, through its local authorities and otherwise, to said pueblo, in confirmation of its said right to and ownership of the said waters of said river, and of its said right to the use of said waters, and that during the time that said territory belonged to Mexico divers grants were made by said Republic of Mexico, through its local authorities and otherwise, in confirmation of the said right of said pueblo to and ownership by it of the said waters of said river and of its said right to the use of said waters.

That during the Mexican regime in California said pueblo gave a license to said Maria Ygnacia Verdugo, who was then in possession of the Rancho Los Felis mentioned in said bill of complaint, and from whom the complainants herein derive whatever title they may have to the portions of said Rancho Los Felis described in said bill, to take out water from said Los Angeles river with which to irrigate a portion of said Rancho Los Felis whereon the excavations mentioned in said bill of complaint were made, and other land in said rancho, all of which said lands belonged to said Maria Ygnacia Verdugo at her death, subject to the rights of this defendant to the waters of said river.

That after the granting of said license, as aforesaid, said Maria Ygnacia Verdugo and her successors in interest continued, until the time of the conveyance next hereinafter mentioned, to divert a portion of the waters of said Los Angeles river and convey the same on said land in said Los Felis rancho for the irrigation thereof.

That thereafter, to wit, on the 30th day of August, 1884, one Griffith Jenkins Griffith, who had acquired whatever rights that said Maria Ygnacia Verdugo and her other successors in interest ever had in the waters taken out of said river under said
60 license, as aforesaid, and who had become and was then the owners in fee of all of the said lands in said Rancho Los Felis so owned by said Maria Ygnacia Verdugo, as aforesaid, excepting the Crystal Springs tract mentioned in paragraph V of said bill as having been conveyed to the Los Angeles City Water Company by Charles V. Howard, and subject to the rights of this defendant to the waters of said river, did for the consideration of twenty-five thousand dollars, then paid to him by this defendant, by deed of conveyance grant and convey to this defendant and to its successors and assigns forever an undivided one-half of all his right, title, and in-

terest in and to all of the water- of said Los Angeles river which at said date were appurtenant to said Los Felis rancho and then owned or claimed by said Griffith Jenkins Griffith; and also an undivided one-half of all the right which said Griffith Jenkins Griffith then had or claimed to have to use any and all portions of water of said Los Angeles river for any purpose whatever, on said rancho or elsewhere, with no reservations to him whatever, except the right to tap the ditch then known as the city canal and reservoir ditch and conveying water from said river to said city of Los Angeles, and to take from said ditch an undivided one-half of all the water of said river then appurtenant to said Rancho Los Felis; and said Griffith Jenkins Griffith did in and by said last-mentioned deed of conveyance and as a part thereof, for himself, his executors, administrators, and assigns, and as a covenant running with all of the lands of said rancho then owned by him, as aforesaid, covenant and agree with this defendant that he and they would not at any time thereafter by sinking wells, tunnelling, or otherwise, interfere with or lessen, by percolation or otherwise, the flow of the waters of said Los Angeles river, or lessen the flow in said last-mentioned ditch or in the flume or pipe forming a continuation of said ditch.

61 That thereafter, to wit, on the 19th day of August, 1885, said Griffith Jenkins Griffith, who was then the owner in fee-simple (subject to the rights so granted by him to this defendant, as aforesaid, by said former conveyance, and to the other rights of this dafendant to the waters of said river) of all of said lands so previously owned by him, as aforesaid, did, for the consideration of the additional sum of twenty-five thousand dollars then paid to him by this defendant, by deed of conveyance grant and convey to this defendant and to its successors and assigns forever all his remaining undivided one-half interest, right, and title in and to the use of the waters of said Los Angeles river then appurtenant and claimed as appurtenant to said Rancho Los Felis, and also all the remaining right and interest which he then had or claimed to have to use any portion of the waters of said Los Angeles river for any purpose whatever, on said Rancho Los Felis or elsewhere, and also all rights that he reserved to himself, his executors, administrators, and assigns, under said deed of conveyance of date August 30, 1884, for tapping the water ditch mentioned in said last-mentioned deed of conveyance and taking water therefrom; and in and by said deed of conveyance of date August 19, 1885, and as a part thereof, said Griffith Jenkins Griffith did, for himself, his executors, administrators, and assigns, and as a covenant running with all of the lands in said Rancho Los Felis then owned by him, covenant and agree with this defendant that he would not, by sinking wells, tunnelling, or otherwise, interfere with, lessen, or decrease by percolation or otherwise the water of said Los Angeles river, or the flow thereof, or of any ditch, flume, or pipe of this defendant.

62 That all of the covenants contained on the part of said Griffith Jenkins Griffith in said two last-mentioned deeds of conveyance are still in full force and effect, and that this defendant is and ever since the execution of said deeds of conveyance

has been vested with the absolute ownership of all of the rights conveyed or vested in it by said deeds.

And this defendant further alleges that after the making of said two last-mentioned deeds of conveyance, to wit, on the 18th day of August, 1885, this defendant did commence an action against said Griffith Jenkins Griffith in the superior court of the county of Los Angeles, State of California, by filing a complaint in said court, wherein it was alleged that said city of Los Angeles was then and for a long time had been the owner and in possession of all of the waters of said Los Angeles river and entitled to the full and free use and enjoyment of all water flowing in said river, and in all the ditches connecting with said river, and the springs and sources from whence the water flowing in said ditches were then derived, and the full, free, and exclusive use of all water in said river, and the right to regulate — control the use and distribution of the same, and did pray judgment against said defendant, Griffith Jenkins Griffith, that the plaintiff's title to all of said water rights and waters set forth in said complaint should be quieted by decree of said superior court.

That thereafter, to wit, on the 19th day of August, 1885, said Griffith Jenkins Griffith duly appeared in said action and disclaimed any interest in any of the property or rights described in in said complaint.

That thereafter, to wit, on the 24th day of August, 1885, a judgment or decree was duly rendered, given, and entered in said action by said superior court whereby it was ordered, adjudged, and decreed that said city of Los Angeles was then the owner of
63 the waters of said Los Angeles river and entitled to the full and free use of all water flowing in said river and in all the ditches connecting with said river and the springs and sources from whence the water- flowing in said ditches were then derived, and the full, free, and exclusive use of all water in said river, and the right to regulate and control the use and distribution of the water of said river, and that all adverse claims of said Griffith Jenkins Griffith and all persons claiming or to claim said premises or water rights or any part thereof through or under said Griffith Jenkins Griffith were thereby adjudged and decreed to be invalid and groundless, and that this defendant, City of Los Angeles, be, and was thereby, declared and adjudged to be the true and lawful owner of the water rights described in said complaint and every part and parcel thereof, and that the title thereto be adjudged to be quieted against all claims and demands or pretensions of said Griffith Jenkins Griffith, who was thereby perpetually estopped from setting up any claim thereto or any part thereof.

That said last-mentioned judgment is still in full force and effect and has never been set aside or modified.

That said Griffith Jenkins Griffith was at the time of the bringing of said suit and at the time of the rendition and entry of said judgment the owner in fee simple (subject to the rights conveyed to this defendant by said two last-mentioned deeds of conveyance and sub-

ject to the other rights of this defendant to said waters of said river) of all of said lands so previously owned by him, as aforesaid.

That, as this defendant is informed and believes, all of the waters alleged in said bill of complaint to have been collected in the excavations mentioned in said bill came into said excavations on the lands in said Rancho Los Felis so owned by said Griffith
64 Jenkins Griffith, as aforesaid, and were at the time of the rendition of said judgment and now are part of the water flowing in said Los Angeles river, or of the springs and sources from whence the water flowing in the ditches mentioned in said judgment are derived.

That said complainants derive their pretended title to the waters and water rights mentioned in said bill of complaint from and through said Griffith Jenkins Griffith by conveyances made subsequently to the rendition and entry of said judgment or decree and with full notice thereof.

That by reason of said judgment or decree said complainants are and each of them is estopped to deny that this defendant is the true and lawful owner of all of the waters and water rights mentioned in said bill of complaint, or that this defendant is not entitled to the full, free, and exclusive use of all of said waters and of the right to regulate and control the use and distribution of the same or to claim said waters or any part thereof.

That all of the conveyances alleged in said bill of complaint to have been made by G. J. Griffith were in fact made after the execution and delivery of said two conveyances from said Griffith to this defendant and after the rendition and entry of said judgment, and were all made subject to said last-mentioned conveyance and to said judgment, and said Los Angeles City Water Company ever since the execution of said two last-mentioned deeds of conveyance, and said Crystal Springs Land and Water Company ever since its incorporation, had full notice and knowledge of both of said deeds, and said Los Angeles City Water Company ever since the rendition of said judgment, and said Crystal Springs Land and Water Company ever since its incorporation, have had full notice and knowledge of said judgment, and that said S. G. Murphy had
65 notice of said two deeds of conveyance and of said judgment at the time of and before taking the deed of trust mentioned in paragraph XIII of said bill.

And, further answering, this defendant alleges that in the year 1868 John S. Griffin, Prudent Beaudry, and Solomon Lazard, on their own behalf, and C. Aguilar, purporting to act as mayor of the city of Los Angeles, on behalf of the predecessor of this defendant, then known as the mayor and common council of the city of Los Angeles, signed a written instrument, bearing date the 20th day of July, 1868, wherein said mayor and common council of the city of Los Angeles did purport to agree with said Griffin, Beaudry, and Lazard, their heirs, executors, administrators, or assigns, to deliver and concede to them, their heirs, executors, administrators, or assigns, for the term of thirty years thence next ensuing, the exclusive use, control, possession, and management of the Los Angeles City water

works, so called, together with all and singular the pipes, flumes, wheels, and other personal property composing and appertaining to said water works in any manner whatsoever, with the right to sell and distribute water for domestic purposes, to receive the rents and profits thereof for their own use and benefit, and the right to lay pipes in any and all the streets of said city, and to dig and make all necessary excavations for that purpose, and the right of way through and over land or streets belonging to said city, with the additional right to take water from said Los Angeles river at a point above or near the dam then existing thereon, provided that said Griffin, Beaudry, and Lazard, their heirs, executors, administrators, or asigns, should at no time take from said river, for the use of said water works, more than ten inches of water without the previous consent of the mayor and common council of said city; and in said
66 instrument said mayor and common council of the city of Los Angeles did purport to agree to make no other lease, sale, contract, grant, or franchise to any person or persons, corporation or company, for the sale or delivery of water to the inhabitants of said city for domestic purposes during the continuance of said instrument, and in and by said instrument said Griffin, Beaudry, and Lazard, for themselves, their heirs, executors, administrators, and assigns, did purport to covenant with said mayor and common council of the city of Los Angeles to replace all the wooden pipes then forming part of said water works with iron pipes and to extend said iron pipes as fast as the citizens desiring to be supplied with water for domestic purposes would take sufficient water therefrom, and to construct such works as would secure to the inhabitants of said city a constant supply of water for domestic purposes, and would upon the expiration of said term return said water works to said mayor and common council of the city of Los Angeles in good order and condition, reasonable wear and the damage of the elements excepted, upon the payment to them of the value of the improvements to be made after the date of said instrument: and in and by said instrument it was further provided that the rights and privileges therein purported to be conceded to said Griffin, Beaudry, and Lazard did not embrace to any extent or have any reference to the water works of said city used in the distribution of water for the purpose of irrigation or affect in any manner any rights of irrigation, either then existing or which might thereafter exist, except as to said ten inches of water mentioned in said instrument, and that said Griffin, Beaudry, and Lazard should not dispose of any water for the purpose of irrigation, but should only take from said river the water
67 necessary for domestic purposes, as in said instrument specified.

That the water works mentioned in said last-mentioned instrument consisted of various appliances through and by means of which water was at the date of said instrument being diverted from said Los Angeles river above the inhabited portion of said city and brought down into said city for domestic use by the inhabitants thereof, and that said water works then and there and ever since

have belonged to said mayor and common council of the city of Los Angeles and this defendant.

That immediately after the said signing of said instrument and in the year 1868 the said Griffin, Beaudry, and Lazard, with the consent of the authorities of said city, took possession of the water works mentioned in said instrument, and commenced to divert sufficient water from said Los Angeles river, and to convey the same to said city of Los Angeles and supply the inhabitants of said city therewith for domestic use, and continued to do so until the assignment next hereinafter mentioned, increasing the amount of said diversion from time to time as needed for said purposes, all of which was done by them under said instrument.

That thereafter, to wit, on the 12th day of June, 1869, said Griffin, Beaudry, and Lazard assigned and transferred — instrument and all their rights thereunder to said Los Angeles City Water Company, and that said company, with the consent of the authorities of said city, from that time to the present has continued to divert sufficient of the waters of said Los Angeles river, amounting at the time of the commencement of this suit to over eight hundred inches, measured under a four-inch pressure, and has during all of said time, claiming to act under said instrument, continued to convey said water to said city of Los Angeles and supply the inhabitants
68 thereof and said city with water for domestic and municipal use, increasing the amount of water so diverted from time to time as needed for said purposes.

That said Los Angeles City Water Company entered into possession of said water works and of the water so diverted from said river by it and by said Griffin, Beaudry, and Lazard, as aforesaid, as tenant of this defendant and its predecessor under said instrument, and ever since has continued in possession of said water and water works under said instrument and as such tenant, and has never surrendered possession of said water works or of said water to this defendant or its predecessor.

That the amount of water so diverted by said Griffin, Beaudry, and Lazard and by said Los Angeles City Water Company, as aforesaid, was the quantity needed at the time of such diversion to supply the inhabitants of said city for domestic use and to supply said city for municipal purposes.

That said Los Angeles City Water Company was organized by said Griffin, Beaudry, and Lazard and their associates for the purpose of supplying said inhabitants with water under said instrument.

That after said Los Angeles City Water Company had so taken possession of said water works and water, as aforesaid, to wit, on the 5th day of November, 1886, it conceived, through its officers, the scheme of unjustly depriving this defendant of its said water, and with that object in view the stockholders of said Los Angeles City Water Company, acting through the persons who were then its directors, did on said date organize The Crystal Springs Land and Water Company, one of the complainants herein, said stockholders of said Los Angeles City Water Company comprising all of the

stockholders of said Crystal Springs Land and Water Com-
69 pany; and thereupon there was issued to each of the stock-
holders of said Los Angeles City Water Company an amount of stock of said Crystal Springs Land and Water Company equal to the stock held by such stockholder in said Los Angeles City Water Company, and ever since that time all of the capital stock of said Crystal Springs Land and Water Company has been held by the stockholders of said Los Angeles City Water Company in the same proportions in which they held the capital stock of said last-mentioned company.

That thereafter, to wit, on the 13th day of December, 1886, and in pursuance and furtherance of said scheme, said Los Angeles City Water Company, acting through its officers, who were also then the officers of said Crystal Springs Land and Water Company, made a deed of conveyance to said Crystal Springs Land and Water Company, acting also through its officers, who were also then the officers of said Los Angeles City Water Company, without consideration, whereby the said Los Angeles City Water Company did purport to convey to said Crystal Springs Land and Water Company the tract of land described in said bill of complaint as 4.09 acres of the Crystal Springs tract, and also all rights to develop water which had been acquired by said Los Angeles City Water Company by deeds of conveyance from said G. J. Griffith, and also a tract of 5.249 acres described in a deed from Mills and Wicks to said Los Angeles City Water Company dated August 26th, 1886, and also the covered wooden conduit and tunnel extending from said 4.09-acre tract to the reservoir of said Los Angeles City Water Company, located in said city of Los Angeles near the north line thereof; which said property so purported to be conveyed comprised all of the property of said Los Angeles City Water Company except said reservoir and
the pipes leading therefrom into the streets of said city and
70 the branches thereof and appurtenances.

That shortly after the execution of said last-mentioned deed of conveyance, to wit, on the 30th day of December, 1886, and as a part of the same transaction and in pursuance and furtherance of said scheme, said Crystal Springs Land and Water Company, acting through its officers, who were also then the officers of said Los Angeles City Water Company, made, without consideration, a pretended lease to said Los Angeles City Water Company, which was also acting through its officers, who were also then the officers of said Crystal Springs Land and Water Company, whereby said Crystal Springs Land and Water Company did purport to lease to said Los Angeles City Water Company for the term of eleven years from the first day of January, 1887, all the property described and purported to be conveyed in and by said last-mentioned deed of conveyance at a monthly rental of forty per cent. of the gross earnings and receipts realized by said Los Angeles City Water Company from the sale of water during said term, and said Crystal Springs Land and Water Company did therein agree that said Los Angeles City Water Company should have the right to convey water through the water conduit therein mentioned from the river of Los Angeles to the full capacity thereof.

That thereafter the officers of the said Los Angeles City Water Company, who were also the officers of said Crystal Springs Land and Water Company, pretending to act on behalf of said last-mentioned company, in pursuance and furtherance of said scheme, caused the excavations mentioned in the bill of complaint to be made upon said Crystal Springs tract and upon the other lands in said Rancho Los Felis whereon it is alleged in said bill of complaint said G. J. Griffith had granted said Los Angeles City Water Company the right to develop water.

71 That the lands upon which said excavations were so made, as aforesaid, adjoined the surface stream of said Los Angeles river, and are in fact the bed and banks of said river, and that said excavations were run into said bed and banks, whereby a large quantity of the waters of said river was diverted therefrom and taken out into said excavations, so that the same ceased to flow in said river as the same had been accustomed to flow from time immemorial, said water so diverted from said river being all of the water mentioned in said bill.

That all of the waters mentioned in the bill of complaint were acquired in the manner last aforesaid, to wit, by means of said excavations, whereby the surface and subterranean stream of said Los Angeles river was tapped, and that said excavations did not in fact develop any percolating waters, but all of the waters collected therein were flowing waters of said Los Angeles river.

That the quantity of water so coming into said excavations, as aforesaid, was the same quantity of water which had immediately prior to the making of said excavations been diverted directly by said Los Angeles City Water Company from the surface stream of said river, and that said excavations were only another means of taking out the waters of said river.

That in truth and fact said Crystal Springs Land and Water Company has never had possession of any of the waters mentioned in said bill of complaint, but said waters are and always have been since their diversion and after the 12th day of June, 1869, in the possession of said Los Angeles City Water Company.

That said possession of all of said waters was obtained by said Los Angeles City Water Company under said instrument of date July 20th, 1868, and as tenant of this defendant, and that such possession would never have been obtained by said company

72 or by any other private corporation or person had not the same been delivered by the authorities of said mayor and common council of the city of Los Angeles under said instrument, as aforesaid, and that possession of said water or of the said water works, or any part thereof, has never been surrendered to this defendant or its predecessor.

Wherefore this defendant, having shown to the court by this answer that it has no jurisdiction of this cause, prays that said bill of complaint be dismissed for want of such jurisdiction.

THE CITY OF LOS ANGELES, *Defendant*,
By W. E. DUNN,
*City Attorney and Solicitor for Defendant.*

LEE & SCOTT, *Of Counsel.*

(Endorsed:) No. 583. U. S. circuit court, so. dist. of California. The Crystal Springs Land & Water Co. *et al.*, complainants, *vs.* The City of Los Angeles, def't. Answer. Received copy of within answer this 16th day of Oct'r, 1896. White & Monroe, solicitors for complainants. Filed Oct. 16, 1896. Wm. M. Van Dyke, clerk. W. E. Dunn, Lee & Scott, rooms 411, 414 Bullard block, Los Angeles, California, sol's for def't.

73 In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

THE CRYSTAL SPRINGS LAND & WATER COMPANY and S. G. MURPHY, Complainants, *vs.* THE CITY OF LOS ANGELES, Defendants. } No. 583.

The replication of the Crystal Springs Land and Water Company and S. G. Murphy, above-named complainants, to the answer of The City of Los Angeles, defendant.

These repliants, saving and reserving to themselves, now and at all times hereafter, all and all manner of benefits and advantage of exception which may be had and taken to the manifold insufficiencies of the said answer, for replication thereto say that they will aver, maintain, and prove their bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by repliant-; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things the repliants are and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

WHITE AND MONROE &
J. S. CHAPMAN,
*Solicitors for Complainants.*

74 (Endorsed:) No. 583. In the United States circuit court, ninth circuit, southern district of California. Crystal Springs L. & W. Co. *et al.*, plaintiffs, *vs.* City of Los Angeles, defendant. Replication. Received copy of the within replication this 14th day of November, 1896. W. E. Dunn and Lee and Scott, by F. J. Thomas, ass't, attorneys for def't. Filed Nov. 14, 1896. Wm. M. Van Dyke, clerk. White & Monroe and Jno. S. Chapman, attorneys for complainants.

75 At a stated term, to wit, the January term, A. D. 1897, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the southern district of California, held at the court-room, in the city of Los Angeles, on Friday, the ninth

day of July, in the year of our Lord one thousand eight hundred and ninety-seven.

Present: The Honorable Olin Wellborn, district judge.

THE CRYSTAL SPRINGS LAND AND WATER COMPANY *et al.*, Complainants, *vs.* THE CITY OF LOS ANGELES, Defendant. } No. 583.

This cause having heretofore been submitted to the court for its consideration and decision upon defendant's motion to dismiss the said cause on the ground that it appears from the bill of complaint and the answer of the defendant that said court has no jurisdiction of said cause, and that said suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of said circuit court, and for costs of defendant, and for such other or further order as may be proper in the premises, and the court having duly considered the same and being fully advised in the premises, it is now, on this 9th day of July, 1897, being a day in the January term, A. D. 1897, of said circuit court of the United States for the southern district of California, ordered that said motion be, and the same hereby is, allowed and the suit dismissed, without
76 prejudice, for want of jurisdiction; to which ruling of the court complainant is allowed an exception.

I, Wm. M. Van Dyke, clerk of the circuit court of the United States for the southern district of California, do hereby certify the foregoing to be a full, true, and correct copy of an original order made and entered by said court July 9th, 1897, in the cause entitled The Crystal Springs Land and Water Company *et al.*, complainants, *vs.* The City of Los Angeles, defendants, No. 583, and now remaining of record therein.

Attest my hand and the seal of said circuit court this 12th day of July, A. D. 1897.

[SEAL.] WM. M. VAN DYKE, *Clerk.*

(Endorsed:) No. 583. U. S. circuit court, ninth circuit, southern district of California. The Crystal Springs Land and Water Company *et al. vs.* The City of Los Angeles. Certified copy of order dismissing suit. Filed Jul- 12, 1897. Wm. M. Van Dyke, clerk.

77 In the Circuit Court of the United States, Ninth Judicial Circuit, Southern District of California.

THE CRYSTAL SPRINGS LAND AND WATER COMPANY and S. G. MURPHY, Complainants, *vs.* THE CITY OF LOS ANGELES, Defendant. } No. 583.

The complainants filed their bill of complaint herein on the 14th day of December, 1893, which is hereto annexed.

A subpœna to appear and answer in said cause was thereupon, on

said 14th day of December, 1893, issued, returnable on the 5th day of February, 1894, which is hereto annexed.

The defendant appeared herein on the 5th day of February, 1894, by C. H. McFarland, Esq., its solicitor.

The demurrer and plea of defendant to the bill of complaint was filed herein on the 30th day of March, 1894, and is hereto annexed.

On the 2nd day of January, 1896, the court made and entered herein an order allowing an amendment of the bill of complaint, a copy of which order is hereto annexed.

On the 2nd day of January, 1896, the complainants filed herein their amendment to the bill of complaint, which is hereto annexed.

The demurrer of defendant to the bill of complaint as amended was filed herein on the 11th day of January, 1896, and is hereto annexed.

78 On the 3rd day of August, 1896, the court made and entered herein an order overruling defendant's demurrer, a copy of which order is hereto annexed.

On the 16th day of October, 1896, the answer of defendant to the bill of complaint was filed herein and is hereto annexed.

On the 14th day of November, 1896, the replication of complainants to the answer of defendant was filed herein and is hereto annexed.

Defendant having thereafter moved said court to dismiss the above-entitled cause on the ground that it appears from the bill of complaint and the answer of the defendant that said court has no jurisdiction of said cause, and that said suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of said circuit court, and for costs of defendant, and for such other or further order as may be proper in the premises, and said motion having been argued by counsel and submitted to the court for its consideration and decision, thereafter, on the 9th day of July, 1897, the court made and entered an order herein allowing defendant's motion and dismissing said suit without prejudice, for want of jurisdiction, a copy of which order is hereto annexed.

On the 12th day of July, 1897, a final decree in accordance with the terms of said order was signed, filed, entered, and recorded herein and is hereto annexed.

79 In the Circuit Court of the United States for the Ninth Circuit within and for the Southern District of California.

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| THE CRYSTAL SPRINGS LAND AND WATER COMPANY and S. G. MURPHY, Complainants, *vs.* THE CITY OF LOS ANGELES, Defendant. | In Equity. No. 583. Decree. |

This cause came on to be heard at this January term on the 11th day of January, 1897, on the motion of the defendant to dismiss the bill of complaint of complainants on the ground that it appeared from said bill of complaint and the answer of the defendant that this court had no jurisdiction of said cause, and that said suit did not really and substantially involve a dispute or controversy properly

within the jurisdiction of this court—Mr. J. S. Chapman appearing for the complainants and Mr. J. R. Scott appearing for the defendant—and the cause having been submitted to the court for decision, after argument thereafter had, the court, on the 9th day of July, 1897, ordered a decree dismissing said bill of complaint on the grounds specified in said motion and for the reasons stated in the opinion of the court rendered and filed herein on said day.

It is therefore by the court ordered, adjudged, and decreed that the bill of complaint of complainants herein be, and the same hereby is, dismissed for want of jurisdiction.

And it is further ordered that said dismissal be without prejudice to the right of complainants or either of them to bring a new bill of complaint in any court having jurisdiction thereof.

80 Thus done in open court the 12th day of July, A. D. 1897.

OLIN WELLBORN, *Judge.*

Decree entered and recorded July 12th, 1897.

WM. M. VAN DYKE, *Clerk.*

(Endorsed:) No. 583. U. S. circuit court, 9th circuit, so. dist. of California. The Crystal Springs Land & Water Co. *et al.*, complainants, *vs.* The City of Los Angeles, defendant. Decree. Filed Jul- 12, 1897. Wm. M. Van Dyke, clerk. W. E. Dunn and Lee & Scott, sol'rs for defendant.

81 Whereupon said bill of complaint, said subpœna, said demurrer and plea of defendant to the bill of complaint, said copy of order allowing an amendment of the bill of complaint, said amendment to the bill of complaint, said demurrer to the bill of complaint as amended, said copy of order overruling defendant's demurrer, said answer of defendant to the bill of complaint, said replication of complainants, said copy of order dismissing suit, and said final decree are hereto annexed, said final decree being duly signed, filed, and enrolled pursuant to the practice of said circuit court.

Attest, etc.:

[SEAL.] WM. M. VAN DYKE, *Clerk.*

(Endorsed:) No. 583. In the circuit court of the United States, ninth judicial circuit, for the southern district of California. The Crystal Springs Land and Water Company *et al. vs.* The City of Los Angeles. Enrolled papers. Filed July 12th, 1897. Wm. M. Van Dyke, clerk. Recorded, Decree Register Book No. 2, page 172.

82 In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

THE CRYSTAL SPRINGS LAND & WATER COMPANY and S. G. MURPHY, Complainants,
*vs.*
THE CITY OF LOS ANGELES, Defendant.

To Messrs. White & Munroe and J. S. Chapman, solicitors for complainants:

Please take notice that the defendant, by its counsel, will, on Monday, the 14th day of December, 1896, at thirty minutes past ten a. m., or as soon thereafter as counsel can be heard, move said circuit court to dismiss the above-entitled cause on the ground that it appears from the bill of complaint and the answer of the defendant that said court has no jurisdiction of said cause, and that said suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of said cir-uit court, and for costs of defendant, and for such other or further order as may be proper in the premises.

Said motion will be based on said bill of complaint and answer.

Respectfully, etc.,

W. E. DUNN,
LEE & SCOTT,
*Solicitors for Defendant.*

Dated December 2nd, 1896.

83 (Endorsed:) No. 583. Circuit court of the U. S., ninth circuit, southern district of California. The Crystal Springs Land & W. Co. *et al.*, pl'ffs, *vs.* The City of Los Angeles, def't. Notice. Received copy of within notice this 2nd day of December, 1896. J. S. Chapman, attorney for pl'ffs. Filed Dec. 2, 1896. Wm. M. Van Dyke, clerk. W. E. Dunn and Lee & Scott, rooms 411–414 Bullard block, Los Angeles, California, attorneys for —.

84 In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

THE CRYSTAL SPRINGS LAND AND WATER COMPANY and S. G. MURPHY, Complainants,
*vs.*
THE CITY OF LOS ANGELES, Defendant.
No. 583.

*Opinion of the Court on Demurrer to the Bill.*

This is a suit to quiet title to certain waters, water rights, and the works therewith connected, hereinafter mentioned. Defendant demurs to the bill for lack of jurisdiction in the court and because complainants do not show themselves entitled to equitable or any relief. The briefs of both parties are devoted mainly to the former ground of demurrer, and the same observation will apply to this opinion. The bill is necessarily somewhat voluminous, but the material facts therein alleged may be summarized with sufficient

clearness for present purposes in a narrow compass and — as follows:

One of the plaintiffs, The Crystal Springs Land and Water Company, is the owner of certain lands—4.9 acres—situated in the county of Los Angeles, California, and the grantee of the right to develop water upon certain other lands, adjacent to those first mentioned. The lands so owned by said company, and those upon which it has the aforesaid right to develop water, are parts of two Mexican grants, the Rancho Los Felis and the Rancho San Rafael, adjoining and to the north of said city, and through which runs the Los Angeles river.

These grants were duly confirmed by the commissioners ap-
85 pointed under the act of Congress for the settlement of private land claims in California, approved March 3, 1851, and upon them patents were duly issued. By means of tunnels, pipes, and other agencies said company has developed on said lands, from waters percolating beneath the surface thereof, seven hundred inches of water, under a four-inch pressure, which it is now supplying to the city of Los Angeles and its inhabitants for domestic and other uses. Of the waters so developed said company is the owner in fee, its ownership being derived, as hereinafter more particularly noticed, from said Mexican grants, and therefore within the protection, as plaintiffs claim, of the treaty of Guadalupe Hidalgo.

The interest of the plaintiff Murphy in said company's property is that of a trustee under a certain deed of trust to secure an issue of bonds to the amount of five hundred thousand dollars and executed by said company August 1, 1890.

The city of Los Angeles was organized under the laws of California, and its charter was, on the 26th of March, 1874, amended by an act of the legislature of said State, which said act in terms granted to said city, to be held and enjoyed in absolute ownership, the full, free, and exclusive right to all of the water flowing in the River Los Angeles at any point from its source or sources to the intersection of said river with the southern boundary of said city, and also the right to develop, economize, use, and utilize all waters flowing beneath the surface in the bed of said river at any point or points between the points of termini thereinabove given, excepting and reserving from the operation of said grant, unless the same should be condemned and taken for public use, all vested private rights to

said water flowing upon the surface or beneath it in the bed
86 of said river. Subsequently, on the 1st day of April, 1876, the legislature of said State passed other acts amendatory of said charter, each of said acts making, again, to said city the same grant of water as that provided for in the first of said acts, to wit, the act of March 26, 1874.

Said city of Los Angeles claims that, as the successor of the Mexican pueblo of Los Angeles and by virtue of the laws of Mexico governing the rights of a pueblo to waters and streams flowing through said pueblo and by the acts of the legislature aforesaid, it is the sole and exclusive owner of all the waters flowing in the Los Angeles river from its source or sources to the southern boundary of said city, and of the sole and exclusive right to develop waters percolat-

ing under the bed of said river or elsewhere which flow into or become a part of the waters of said river, and that the whole space between the bases of the mountains each side of said river above the northern boundary of said city, and including the tract whereon said excavations were made and said pipes laid, constitutes a portion of the bed of said river within the meaning of said acts of the legislature of the State of California, and that all of the waters percolating in the said soil belong to the said city of Los Angeles, and that said tunnels and pipes were excavated and laid without right, and that the same belong to said city, and that said waters, so developed and concentrated and flowing in said pipes, belong to said city, and, further, that said city, under and by virtue of said acts of the legislature, has the sole and exclusive right to develop the waters percolating in said lands.

The bill then alleges that all of said claims made by said city are false and unfounded and without right in law, but that said claims have greatly depreciated the capital stock of said company
87 and impaired the security provided by the trust deed above mentioned, and that said waters and water rights are of the value of more than one million dollars, and prays for a final decree quieting the title of plaintiffs to said waters, water rights, and the works therewith connected.

Plaintiffs insist that there are two grounds, either one of which will support the jurisdiction of the court, namely: First, that the suit arises under the treaty of Guadalupe Hidalgo; second, that defendant's claim to said waters and water rights is based on said amendments to its charter, which amendments, if construed as making the grant so claimed by defendant, are repugnant to the Constitution of the United States, and therefore the case is one arising under the Constitution of the United States. The defendant controverts both of these grounds. I shall consider them in the order of their statement:

First. The authorities which bear upon said issues consist of three classes of cases: First, those relating to the re-examination by the Supreme Court of the United States of decisions made by the highest court of a State in which such decisions could be had; second, suits removed or sought to be removed before trial from the State into the United States courts; third, suits brought originally in the United States courts. It is true, as suggested by counsel for plaintiffs in their last brief, that dismissals of the writs of error in cases of the first class do not show that the suits could not have been maintained, if originally brought in the Federal court, because the appellate jurisdiction of the Supreme Court of the United States to review the decision of a State court requires two conditions: First, a Federal question; second, its decision in a particular way; whereas, in the third class of cases above mentioned, in which category falls the
88 present one, a Federal question is the only prerequisite. This distinction, however, between the decisions in the first and third classes of cases does not obtain between the second and third classes, for the reason that jurisdiction in a case of removal and jurisdiction where the suit is originally brought in the Federal court are

regulated by statutes whose language is substantially, if not literally, the same. The circuit courts were by the act of Congress of March 3, 1875, given original jurisdiction of all suits of a civil nature, at common law or in equity, where the matter in dispute exceeds, exclusive of interest and costs, the sum or value of two thousand dollars and arising under the Constitution or laws of the United States or treaties made or which shall be made under their authority * * * (18 Stat. at L., 470). Section 2 of the same act provides for the removal of cases from the State courts into the Federal courts, and the enumeration of the cases in which removals are authorized is in the same language as that employed in the first section to enumerate the cases where original jurisdiction exists. Prior to this time the mere involvement in a suit of a Federal question did not authorize its removal. By the act of August 13, 1888, which limits the right of removal to defendants and is otherwise amendatory of the aforesaid act of 1875, it is provided that the removal may be had in any case where original jurisdiction exists without enumerating the cases (1st Supp. Revised Statutes, 611). From this short review of the acts of Congress it will be seen that the decisions of the courts in removal cases are directly applicable here, because the right of removal depends upon language similar to that which confers original jurisdiction.

89 Now, with reference to the right of removal the Supreme Court has said: "Before a circuit court can be required to retain a cause under this jurisdiction, it must in some form appear upon the record, by a statements of facts, 'in legal and logical form,' such as is required in good pleading, that the suit is one which 'really and substantially involves a dispute or controversy' as to a right which depends upon the construction or effect of the Constitution or some law or treaty of the United States." * * * "Under the act of 1875, for the purposes of removal the suit must be one 'arising under the Constitution or laws of the United States or treaties made or which shall be made under their authority;' that is to say, the suit must be one in which some title, right, privilege, or immunity on which the recovery depends will be defeated by one construction of the Constitution or a law or treaty of the United States, or sustained by a contrary construction. Starin *v.* New York City, 115 U. S., 257; XXIX, 390, and cases there cited" (Carson *vs.* Dunham, 121 U. S., 421; XXX, 994). To same effect is the opinion in Starin *vs.* New York, *supra*, from which I extract the following:

"The character of a case is determined by the questions involved. Osborn *v.* Bank of U. S., 9 Wheat., 824 (22 U. S., bk. 6, L. ed., 224). If from the questions it appears that some right, title, privilege, or immunity on which the recovery depends will be defeated by one construction of the Constitution or a law of the United States or sustained by the opposite construction, the case will be one arising under the Constitution or laws of the United States, within the meaning of that term as used in the act of 1875; otherwise not. Such is the effect of the decisions on this subject" (Starin *vs.* New

York City, 115 U. S.,248; XXIX, 390). To the quotation last above given the court cites a large number of authorities.

90 Again, it is authoritatively declared "that a case in law or equity consists of the right of one party, as well as of the other, and may properly be said to arise under the Constitution or a law of the United States whenever its correct decision depends on the construction of either." * * * "That it is not sufficient to exclude the judicial power of the United States from a particular case, that it involves questions which do not at all depend on the Constitution or laws of the United States; but when a question to which the judicial power of the Union is extended by the Constitution forms an ingredient of the original cause, it is within the power of Congress to give the circuit courts jurisdiction of that cause, although other questions of fact or of law may be involved in it." (New Orleans, Mobile and Texas Ry. Co. *vs.* Mississippi, 102 U. S., 135; XXVI, 98.)

Having now ascertained the authoritative interpretations of the provisions of those acts of Congress which confer jurisdiction upon the Federal courts in suits arising under the Constitution or laws or treaties of the United States, we come to the question whether or not the mere fact that both parties claim under Mexican grants, confirmed and patented by the United States, brings the pending suit within the scope of said provisions. This question, I think, is conclusively and negatively answered in Phillips *vs.* Mound City Land and Water Company, 124 U. S., 605–612; XXXI, 588; and California Powder Works *vs.* Davis, 151 U. S., 389–391; XXXVIII, 206. In the former of these cases occurs the following paragraph, which is quoted with approval in the latter case:

"Article VIII of the treaty protected all existing property rights within the limits of the ceded territory, but it neither created the rights nor defined them. Their existence was not made to

91 depend on the Constitution, laws, or treaties of the United States. There was nothing done but to provide that if they did in fact exist under Mexican law, or by reason of the action of Mexican authorities, they should be protected; neither was any provision made as to the way of determining their existence. All that was left by implication to the ordinary judicial tribunals. Any court, whether State or national, having jurisdiction of the parties and of the subject-matter of the action was free to act in the premises."

While it is true that both of these cases involve only the appellate jurisdiction of the Supreme Court of the United States to re-examine the final judgment of a State court still the decisions, however great the difficulty suggested by counsel for plaintiffs of reconciling them with the reasoning of Judge Story in Martin *vs.* Hunter, 1 Wheat., 304–497, necessarily rest upon the proposition that the mere fact that both parties claim under Mexican grants does not present a Federal question. Is there, then, in the case at bar, and bearing upon the question of jurisdiction, anything more than the mere fact that both parties claim under such grants? If this question should be determined solely from the briefs of the parties, there is a material

jurisdictional fact which exists in and distinguishes the present case from both Phillips *vs.* Mound City Land and Water Company and California Powder Works *vs.* Davis, namely, a real and substantial controversy over the construction of the treaty. This controversy is begun by the defendant itself on the second page of its brief, in the contention that complainants are not within the protection of the eighth article of the treaty, because said article applies only to Mexicans who did not elect to become citizens of the United States, and their heirs and grantees, and that plaintiffs are not within this category. This contention complainants in
92 their brief resist partly as follows: " * * * but we had supposed it would be somewhat singular if these treaty guarantees were to be considered as purely personal matters, limited to the Mexican citizens alone and extending no further, for any such narrow construction of the treaties would shear them of the protection of the Mexican owners. One of the highest rights of property is the right to dispose of it, and a protection which is purely personal and does not pass to an assignee or grantee is but an indifferent protection of the Mexican owner. No such narrow construction is permissible, and we respectfully submit that the case of New Orleans *vs.* Armas, 9 Peters, 223, gives not the slightest color to such a proposition." Thus it appears that at the very threshold of this argument the court is confronted with an earnest denial and assertion from defendant and complainants respectively of the applicability of the treaty. How else than by a construction of the treaty can this controversy be determined? If there were nothing else in the case, I should be disposed to think that because of the controversy just mentioned the suit was one arising under the treaty; but back of this controversy over the construction of the treaty is the question whether or not said controversy is material; in other words, whether or not the rights of the complainants are dependent upon the treaty. Suppose the eighth and ninth articles had been altogether omitted, and that the treaty was otherwise silent as to rights of property in the ceded territory, would it not by the law of nations have been obligatory upon the United States to afford such rights protection as ample as that declared in said articles? (See Botiller *vs.* Dominguez, 130 U. S., 238; XXXII, 927; United States *vs.* Moreno, 68 U. S., 400–405; XVII, 633; Mitchell *vs.* United
93 States, 9 Pet., 710; IX, 283). And, if this be so, does it not follow therefrom that a dispute or controversy about the construction of the treaty is irrelevant, and therefore neither real nor substantial? These are questions, however, which it is unnecessary for me to answer, as I shall leave undetermined the issue to which they relate—*i. e.*, whether or not the suit arises under the treaty—and rest my decision upon another branch of the case.

Second. Plaintiffs further contend that the suit is one arising under the Constitution of the United States, because defendant claims the property in dispute and grounds the claim upon said amendments to its charter, which amendments, if they authorize said claim, are in conflict with the provision of section 10, article 1, of the Constitution, that no State shall pass any law impairing the obligation

of contracts, and the kindred provision of section 1 of the 14th amendment, that no State shall deprive any person of life, liberty, or property without due process of law. The Federal question here contended for, it will be observed, grows out of, not the deraignment of plaintiff's title, but an adverse claim set up by defendant and involving the operation and effect of the Constitution of the United States upon the acts of the legislature of California. As to the pleadings necessary to raise a Federal question of this sort, the following extract is in point:

"It is objected, however, by the defendants that the pleadings do not in words say that the statute is void because it conflicts with the Constitution of the United States, and do not point out the special clause of the Constitution supposed to render the act invalid.

"It would be a new rule of pleading, and one altogether superfluous, to require a party to set out specially the provision of the Constitution of the United States on which he relies for the
94 action of the court in the protection of his rights. If the courts of this country, and especially this court, can be supposed to take judicial notice of anything without pleading it, it is the Constitution of the United States; and if the plaintiff and defendant in their pleadings make a case which necessarily comes within some of the provisions of that instrument, this court surely can recognize the fact without requiring the pleader to say in words: 'This paragraph of the Constitution is the one involved in this case.'" (Bridge Prop'rs *vs.* Hoboken L. and I. Co., 68 U. S., 116; XVII, 575.)

The next question to be determined is, When does a suit come within the provisions of or, in other words, arise under the Constitution of the United States? This question has been somewhat fully discussed in the preceding pages, and to what is there said I shall now only add the following extract from one of the authorities cited by defendant:

"A cause cannot be removed from a State court simply because in the progress of the litigation it may become necessary to give a construction to the Constitution or laws of the United States. The decision of the case must depend upon that construction. The suit must, in part at least, arise out of a controversy between the parties in regard to the operation and effect of the Constitution or laws upon the facts involved." (Gold Washing and Water Co. *v.* Keyes, 96 U. S., 199; XXIV, 658.)

Now, it is hardly necessary to fortify with precedents the proposition that an act of a State legislature which undertakes to transfer to one person property belonging to another is not due process of law, and whenever in any suit the right or title of either party is grounded upon such State legislation, there is "a controversy be-
tween the parties in regard to the operation and effect of
95 the Constitution * * * upon the facts involved," and therefore the Federal jurisdiction attaches. As illustrating this rule, however, and the kindred rule relating to State laws impairing the obligations of contracts, the following may be consulted: Field's Federal Courts, sec. 122; Cooley, Const. Lim., pages 351–353; White *vs.* Greenhow, 114 U. S., 307; XXIX, 199; Smith *vs.*

Greenhow, 109 U. S., 669; XXVII, 1080; Bridge Prop'rs *vs.* Hoboken L. and I. Co., 68 U. S., 116; XVII, 571 (requisite pleadings); Barry *vs.* Edmunds, 116 U. S., 550; XX, 729; Citizens' Street Railway Co. *vs.* City Railway Co., 56 Fed. Rep., 786; Hamilton Gas Light Co. *vs.* City of Hamilton, 146 U. S., 258; XXXVI, 963. From the opinion in the last case I quote as follows: "We sustain the jurisdiction of the circuit court because it appears that the defendant grounded its right to enact the ordinance in question and to maintain and erect gas works of its own upon that section of the municipal code of Ohio adopted in 1869 (now section 2486 of the Revised Statutes), providing that the city council of any city or village should have power, whenever it was deemed expedient and for the public good, to erect gas works at the expense of the corporation or to purchase gas works already erected therein, which section, the plaintiff contends, if construed as conferring the authority claimed, impaired the obligation of its contract previously made with the State and city." In the case at bar, can the jurisdiction of this court be sustained because of any claims of defendant, grounded upon its charter amendments, to the waters and water rights, tunnels, and pipes described in the complaint? This question may be resolved into three elementary ones: First, Do plaintiffs own said waters and water rights, tunnels, and pipes? Second, Does defendant claim said property? Third, Does this claim rest, in
96 whole or in part, on said acts of the legislature? An affirmative answer to each one of these questions is essential to the jurisdiction of the court. With reference to the second and third, it must be remembered that the merits of the claims therein mentioned are not, so far as the jurisdictional inquiry or any other branch of the demurrer is concerned, at all involved. The point to be determined is not whether defendant's claims are well or ill-founded—*i. e.*, not what said amendments really grant, but simply does defendant claim said property; and, if so, is the claim grounded wholly or at all upon said amendments? With this preliminary understanding, the second and third questions are readily answered in the affirmative, for the bill expressly alleges that defendant claims said waters and connected works, and that this claim is grounded, in part, at least, on said acts of the legislature. This leaves, then, for consideration only the first of the three questions above stated, namely, Do plaintiffs own the property in dispute? And here again we must, of course, look exclusively to the bill. If it alleges plaintiffs' ownership, either as an ultimate fact or as a conclusion of law from other sufficient facts particularly pleaded, the first question is as surely as the others answerable in the affirmative. Where ownership is alleged as an ultimate fact, the allegation must simply be accepted as true; where it is alleged as a conclusion of law from facts particularly set forth, the court must look to such facts and determine therefrom the question of ownership regardless of the pleader's conclusion. This distinction is important, as it serves to mark the ground of my decision. What, then, is the character of the bill in the respect indicated? Paragraph 12 is as follows: "Your orators further state and show that the said Crystal Springs

Land and Water Company is the owner in fee of the said
97 pipes and the said percolating waters so developed, and by and through its tenants and agents is in the possession thereof."

* * * This paragraph, standing alone, would certainly be an unqualified averment of ownership. Is there anything else in the bill changing the character of this averment? I answer, "No," although to my mind the question is not entirely free from difficulty. Paragraphs 10 and 15 relate to the sources of plaintiffs' title, and are as follows:

"X. Your orators further state and show that all of the said development was done upon lands either belonging to the said Crystal Springs Land and Water Company or through the lands upon which the rights to make such development had been granted by the said G. J. Griffith, the owner of the said lands, and by reason of the said grant and the ownership of the said lands and the development of the said waters by means of the said excavations and the pipes laid therein the said Crystal Springs Land and Water Company became and ever since has been the owner of the said waters and water pipes and still is the owner thereof, subject to the rights of the said S. G. Murphy, one of the plaintiffs herein."

"XV. And your orators further show upon information and belief that under the laws of Spain and Mexico the grantees of the said grants made by the Spanish and Mexican governments of the said Ranchos San Rafael and Los Felis the water percolating in the soil thereof passed with the said grants and became the property of the owner of said lands as part and parcel of said lands, and your orators' claim in and to said waters so collected together by means of the said excavations and the said pipes and so by them conducted to the works of said plaintiffs herein and distributed by their agents and tenants to the people of the city of Los
98 Angeles and to the said city for the uses and purposes aforesaid is derived from, through, and under the said grants made by the said Spanish and Mexican authorities and the patents issued by the United States, as hereinbefore alleged, and the said rights of your orators are protected by the treaty of Guadalupe Hidalgo between the United States and the Republic of Mexico, and the said title to said water and rights to the use thereof were confirmed by the authorities of the United States by and through the proceedings aforesaid."

This partial deraignment of plaintiffs' title, considered in connection with the claims which it is elsewhere in the bill alleged defendant asserts, might seem at first blush to so qualify the general averment of plaintiffs' ownership in paragraph 12 as to raise, for present determination, the question, together with its legal consequences as applied to the case at bar, whether, in the territory of California, before its cession by Mexico to the United States, the right to develop percolating waters which through natural processes found their way ultimately into a stream flowing through a pueblo, was acquired by the pueblo in virtue of its organization or was included in a grant by the Mexican government to an individual of the soil through which said waters percolated, or was reserved by

said government for the use of all its inhabitants. A careful reading, however, of the three paragraphs just quoted satisfies me that this question does not arise on demurrer. Paragraphs 10 and 15, I think, are to be viewed only as supports for plaintiffs' contention that the suit arises under the treaty of Guadalupe Hidalgo. However this may be, these two paragraphs, while they would probably confine plaintiffs in their proof of ownership to the source indicated, are not such a deraignment of title as would make paragraph 12 the mere statement of a conclusion of law. This last-men-
99 tioned paragraph, therefore, must be construed as the distinct averment of an ultimate fact, namely, plaintiffs' ownership, and as such including, by unavoidable implication, all probative facts essential to the existence of such ultimate fact. (Heeser *vs.* Miller, 77 Cal., 192; Churchill *vs.* Lauer, 84 Cal., 233.)

Now, the bill does not in terms deny that the waters in dispute, prior to their development by plaintiffs, flowed into or became a part of the Los Angeles river, but if it were true, about which, however, I do not at this time express or intimate any opinion, that before the cession of California a pueblo therein had the exclusive right to all percolating waters which ultimately form a part of the stream flowing through the pueblo, and this is the most favorable view for defendant, still the bill would be good on demurrer, because in that event the averment of plaintiffs' ownership wolud necessarily imply that said waters prior to their development did not flow into or become a part of the Los Angeles river.

My opinion is that the bill states a case within the jurisdiction of this court and entitling plaintiffs to equitable relief. Demurrer overruled and defendant assigned to answer the bill at the rule day in September next.

OLIN WELLBORN, *Judge.*

(Endorsed:) No. 583. U. S. circuit court ninth circuit, southern district of California. Crystal Springs Land and Water Co. *et al. vs.* City of Los Angeles. Opinion. Filed Aug. 3, 1896. Wm. M. Van Dyke, clerk.

100 In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

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| THE CRYSTAL SPRINGS LAND AND WATER COMPANY and S. G. MURPHY, Complainants, *v.* THE CITY OF LOS ANGELES, Defendant. | No. 583. |

The present hearing is on a motion to dismiss the bill for want of jurisdiction.

Jurisdictional issues were raised at an earlier stage of the suit by demurrer. Complainants then maintained that the suit was one of Federal cognizance on two grounds—first, that the suit arose under the treaty of Guadalupe Hidalgo; second, that defendant's claim to the water properties described in the bill was based in part at

least on acts of the legislature of California, which acts, if construed as making the grants claimed by defendant, are repugnant to the Constitution of the United States, and therefore the case is one arising under said Constitution. Defendant controverted both grounds. The demurrer was overruled, the court resting its decision on the latter of the above-stated grounds, leaving the former undecided. See 76 Fed. Rep., 148.

Defendant has since filed its answer and entered a motion for a dismissal of the suit on the ground that the answer disclaims, as against vested rights of complainants, any title to said waters
101 through said acts of the legislature. On this motion to dismiss the argument has not been confined to the effect of defendant's alleged disclaimer, but by permission of the court the question as to whether or not the suit arises under the treaty above mentioned has been re-argued.

The allegations of the bill, as summarized in complainants' last brief, are these: "On the 22nd of March, 1843, a grant was made by the then Mexican governor to Maria Ygnacio Verdugo of a certain tract of land known as the Los Feliz rancho, which was subsequently confirmed by the proper authorities of the United States, and on the 18th of April, 1871, a patent was duly issued by the United States to the Mexican grantee. * * *

"And another grant was made on the 20th of October, 1784, by Pedro Fajes, then the governor, under the Spanish government, of California, to Julio Verdugo of another certain tract of land known as the San Rafael rancho, and which was subsequently, in 1798, confirmed by the Mexican government and patented on the 28th day of January, 1882, by the said Government of the United States, the claim having been finally confirmed on June 4th, 1857. * * *

"On the 26th of October, 1852, the city of Los Angeles filed its petition with the commissioners to settle private land claims for the confirmation of their title to a tract containing sixteen square leagues granted by the Mexican government to it on the 25th day of August, 1844. The claim was confirmed to four square leagues, rejected as to the rest, and the patent issued on the 9th of August, 1866, and the tract conveyed to the city by that patent upon the said confirmed grant is bounded on the north by the Rancho Los Feliz and Rancho San Rafael. * * *

"The Los Angeles river rises to the north of the city, flows
102 down through the two ranchos named and through the city, entering the city on the northern boundary at or near its middle point, and flowing in a southerly direction. * * *

"The Crystal Springs Land and Water Company acquired a certain tract in the Los Feliz rancho claimed under the said Mexican grant and patented (giving a description of the tract).

"On June 14th, 1896, G. J. Griffith owned about 4,900 acres of the Rancho Los Feliz, and granted to the Los Angeles City Water Company the right to develop water on that part of the Los Feliz rancho belonging to him. * * * The Crystal Springs Land and Water Company had acquired a part of the San Rafael rancho, and still own it, subject to the rights of Griffith. * * * A

certain portion of that rancho contains a large amount of percolating water. * * * The Crystal Springs Land and Water Company had acquired the rights of the Los Angeles City Water Company. * * *

"Under these rights, to wit, the ownership of a certain portion of the land and the grant of the right to develop on other portions, they had, within the limits of their ownership, excavated in the soil and gathered together of the percolating waters about seven hundred inches, measured under a four-inch pressure, which they conducted by means of pipes to a gatehouse, at which point the waters so developed are united together and conveyed through pipes to the city for the purpose of furnishing the inhabitants of the city with water for domestic purposes. * * * They are the owners of the waters so developed by virtue of the rights and incidents of ownership passing by the Mexican grants and their confirmations and the patents of the United States to the said lands. * * *

"The waters percolating in the soil passed with the grants and became the property of the owners of the land, and the
103 rights of the plaintiffs are derived from, through, and under the said grants made by the Spanish and Mexican governments and the confirmation thereof by the United States, and the patents issued, and they are protected by the treaty between the United States and Mexico, and the title in said waters and rights and to the use thereof were confirmed by the authorities of the United States as aforesaid. * * *

"Other lands, both north and south of the patent boundaries of the city through which the Los Angeles river flows, were acquired from the Mexican and Spanish governments, and other lands which became vested in the United States upon the acquisition of California from the Mexican government, through which the river flows, have since been acquired by private parties from the United States and patents issued. The rights of these parties, both under other Spanish and Mexican claims and also by patents from the United States, were as riparian owners, and they were entitled to the waters of the river and the waters percolating in the soil by virtue of their ownership of the land, whether they ultimately found their way into the Los Angeles river or not. * * *

"All the waters so taken by the plaintiffs do not diminish the quantity of water flowing in the river. * * * Certain acts of the legislature—one passed on the 26th of March, 1874—undertook to grant to the city of Los Angeles certain rights, and among them the full, free, and exclusive right to all the water flowing in the river from its sources to the intersection of the river with the south boundary of the city, and the right to develop, economize, use, and utilize all waters flowing beneath the surface in the bed of said river between the points of termini therein," but excepted and reserved from the operation of said grant of the water flowing
104 in said river, unless the same should be condemned for public use, all vested private rights to the said water flowing upon the surface or beneath it in the bed of said river. * * *

An act passed the first day of April, 1876, made a similar grant. * * * In another act of the same kind, passed in March, 1878, the exceptions in favor of private rights were not made. * * *

"The city of Los Angeles claims that the city, as the successor of the Mexican pueblo of Los Angeles, and by virtue of the laws of Mexico governing, regulating, and fixing the rights of the pueblo to the waters of the river flowing through it, and the said several acts of the legislature referred to, is the sole and exclusive owner of all the waters flowing in the Los Angeles river from its sources to the southern boundary of the city, and the exclusive right to develop waters percolating under the bed of the river or elsewhere which flow into or become a part of the waters of said Los Angeles river, and claims that the development made by the Crystal Springs Land and Water Company was without right and the water belonged to the city."

The prayer of the bill is for a final decree quieting the title of the complainants to said waters, water rights, and the works therewith connected.

The answer of defendant, or those parts of it which are material to the pending motion, denies the rights asserted by complainants to the water properties in dispute, and that by the laws of Spain Mexico or any other laws the waters percolating in the soils of the ranchos San Rafael and Los Feliz passed by the grants of said ranchos, and admits that defendant claims as the successor of the Mexican pueblo of Los Angeles by virtue of the laws of Mexico and said several acts of the legislature of California said water
105 properties, but denies that it claims that said acts of the legislature "granted to the city of Los Angeles * * * any vested private right, if any, to the water flowing or being upon the surface or beneath it in the bed of said Los Angeles river or any water or right whatsoever, if any, which was at the time of the passage of said acts of the legislature vested in said Los Angeles City Water Company or its predecessor in interest or in the predecessor in interest of said Crystal Springs Land and Water Company; but, on the contrary, this defendant disclaims having acquired under any of said acts of the legislature any right, if any, to the water flowing upon the surface or beneath it in the bed of said river or any other water or right whatsoever, if any, which was at the time of the passage of said acts vested in the said Los Angeles City Water Company or its predecessor in interest or in the predecessor in interest of said Crystal Springs Land and Water Company or in any private individual or corporation; and this defendant denies that it claims or ever claimed under or by virtue of said acts of the legislature or any of them the right to develop waters percolating in the bed of said river or elsewhere without having first obtained the right of entering upon the land so to develop from the owner of the soil where such development should be made either by grant from such owner or by condemnation of such right and making compensation to said owner therefor or otherwise."

And further denies "that it claims or ever claimed that there was granted by said acts of the legislature or any of them to the city of

Los Angeles * * * any right, if any, to develop waters percolating under the bed of said Los Angeles river or elsewhere which was at the time of the passage of said acts vested in any private
106 individual or corporation or in said Los Angeles City Water Company or its predecessor in interest or in the predecessor in interest of the said Crystal Springs Land and Water Company; and this defendant disclaims that said acts of the legislature or any one or more of them had the effect of granting to this defendant any right, if any, to develop water percolating in the bed of said Los Angeles river or elsewhere, which was at the time of the passage of said acts vested in any private person or corporation or in said Los Angeles City Water Company or its predecessor in interest or in the predecessor in interest of said Crystal Springs Land and Water Company."

And further "denies that it claims under or by virtue of said acts of the legislature of any of them or any other act of said legislature the right, if any, to develop the waters alleged to be percolating in the land mentioned in said paragraph XXIII which was at the passage of said acts vested in any private individual or corporation or which was at the passage of said acts vested in said Los Angeles City Water Company or its predecessor in interest or in the predecessor in interest of said Crystal Springs Land and Water Company and which has not since been acquired by this defendant other than by said acts of the legislature; and this defendant disclaims having acquired any such right under or by virtue of said acts of the legislature or any of them."

As already indicated, the questions to be decided on the pending motion and the pleadings, whose material averments I have recapitulated, are two: First, does the suit arise under the treaty of Guadalupe Hidalgo? Second, assuming what has heretofore been decided by me (76 Fed. Rep., 148), that on the face of the bill, by reason of its allegations to the effect that defendant's claim
107 is based upon said acts of the legislature of California, and that said acts, if construed in accordance with such claim, are violative of the Constitution of the United States, a Federal question is presented, does the answer of the defendant contain such a disclaimer as eliminates from the suit this Federal question?

First. A careful review of the arguments advanced and precedents invoked respectively by complainants and defendant satisfies me that Phillips *v.* Association, 124 U. S., 605–612; XXXI, 588, and Powder Works *v.* Davis, 151 U. S., 389–391; XXXVIII, 208, cannot, as to their essential features, be distinguished from the case at bar, but are conclusive against complainants' contention that the suit arises under the treaty of Guadalupe Hidalgo. The principle of the two cases last cited, as I understand them, is this: Where the parties claim under Spanish or Mexican grants, confirmed and patented by by the United States, and the controversy is only as to what were the rights acquired by the parties respectively or their predecessors in interest, under the Spanish or Mexican governments, it being conceeded that the rights so acquired, whatever they may have been, were included in the confirmation and quitclaimed through the pat-

ent of the United States, Federal jurisdiction does not exist, and it is immaterial whether such rights were acquired through the original grants or transactions subsequent thereto. In the case at bar, as appears from the pleadings, defendant concedes the validity of the Mexican and Spanish grants and patents issued thereon, through which complainants derive title, and that said grants and patents include the lands they purport to grant. The matter in dispute is whether or not the waters percolating under said lands passed with the original grants thereof, and the determination of this question does not require a construction of the Constitution or any
108 treaty or statute of the United States, but depends upon the laws of Mexico and Spain.

Careful re-examination of New Orleans *v.* De Armas *et al.*, 9 Peters, 223; IX, 109, dismissed for want of jurisdiction, further satisfies me that I did not give to said case in my former opinion suitable weight or scope. Whether or not that case sustains the contention in support of which it was invoked by the defendant herein, namely, that complainants' title is not protected by the treaty of Guadalupe Hidalgo, is immaterial in view of the ruling which I have just indicated, for if it be conceded that complainants' title is protected by said treaty, still, in legal contemplation, the suit does not arise thereunder, because the controversy which it involves is not over the construction of the treaty, but as to the validity of conflicting claims of title under Spanish and Mexican grants prior to the treaty. The purpose for which I have adverted in this connection to the case of New Orleans *v.* De Armas *et al.* is to call attention to the fact that some of the utterances of the court therein are strongly confirmatory of the principle enunciated in Phillips *v.* Association, and Powder Works *v.* Davis, *supra*. The first paragraph of the syllabus in said case of New Orleans *v.* De Armas *et al.* is as follows: "A lot of ground situated in the city of New Orleans, which was occupied under an incomplete title for some time by permission of the Spanish government, granted before the acquisition of Louisiana by the United States, was confirmed to the claimants under the laws of the United States, and a patent was issued for the same on the 17th day of February, 1821. The city of New Orleans, claiming this lot as being part of a quay dedicated to the use of the city in the original plan of the town, and therefore not grantable by the King of Spain,
109 enlarged the levee in front of New Orleans so as to include it. The patentees from the United States brought a suit in the district court of the State of Louisiana for the lot, which pronounced judgment in their favor, and that judgment was affirmed by the supreme court of the State. The judgment was removed to this court under the twenty-fifth section of the judicial act. A motion was made to dismiss the writ of error for want of jurisdiction;" and directly in point are the following quotations from the opinion of the court:

"The appellees claim title to a lot of ground in the city of New Orleans, as purchasers from the heirs of Catherine Gonzales, the widow of Thomas Beltran, alias Bertrand, who had been in possession of the lot for several years by permission of the Spanish gov-

ernment. This incomplete title was regularly confirmed under the laws of the United States, and a patent was issued for the premises to Catherine Gonzales on the 17th of February, 1821.

"The city of New Orleans, claiming this lot as being part of a quay dedicated to the use of the city in the original plan of the town, and therefore not grantable by the king, has enlarged the levee so as to embrace it. The appellees brought their petitory action in the district court of the State of Louisiana, praying to be confirmed in their rights to the said lot of ground, and that the corporation might be enjoined from disturbing them in the exercise thereof. * * *

"The controversy in the State court was between the two titles, the one originating under the French, the other under the Spanish government. It is true the successful party had obtained a patent from the United States acknowledging the validity of his previous incomplete title under the King of Spain. But this patent
110 did not profess to destroy any previous existing title, nor could it so operate, nor was it understood so to operate by the State court. It appears from the petition filed in the district court that the patent was issued in pursuance of the act of the 11th of May, 1829, entitled 'An act supplementary to the several acts for the adjustment of land claims in the State of Louisiana.' That act confirms the titles to which it applies 'against any claim on the part of the United States.' The title of the city of New Orleans would not be affected by this confirmation. But, independent of this act, it is a principle applicable to every grant, that it cannot affect pre-existing titles. (The United States *v.* Arredondo, 9 Peters, 738.)

"The judgment of the State court appears on the record to have depended on, and certainly ought to have depended on, the opinion entertained by that court of the legal rights of the parties under the Crowns of France and Spain. The case involves no principle on which this court could take jurisdiction which would not apply to all controversies respecting titles originating before the cession of Louisiana to the United States. It would also comprehend all controversies concerning titles in any of the new States, since they are admitted into the Union by laws expressed in similar language."

These quotations, in so far as they state the facts and enunciate the principles on which the court denied the Federal character of the controversy there involved, apply, with uncommon aptness and precision, to the case at bar.

The authorities relied on by complainants have had from me close attention, but I do not think they overthrow the principle of the cases hereinbefore cited. In Glasglow *v.* Baker, 128 U. S., 560; XXXII, 503, writ of error to the supreme court of Missouri, plaintiffs and defendants respectfully claimed under
111 different acts of Congress, the final decision of the State court being in favor of the defendants, and therefore the suit was clearly within the jurisdiction of the Supreme Court. Knight *v.* United Land Association, 142 U. S., 161–216; XXXV, 974, writ of error to the supreme court of California, was also clearly a suit of Federal cognizance, because the contest was between titles derived,

one through a grant from the State of California and the other through a patent issued by the Government of the United States, and the decision of the State court was against the validity of the title claimed under authority of the United States. The same remarks, substituting the State of Oregon for the State of California, apply to Shively *v.* Bowlby, 152 U. S., 1; XXXVIII, 331.

McDonogh *v.* Millaudon *et al.*, 3 How., 693; XI, 787, writ of error to the supreme court of Louisiana, cannot be regarded as favorable to complainants herein, as shown by the following quotation: "The State court held McDonogh's title to be valid to every extent that it has been recognized by the United States, and only applied the local laws of Louisiana in its construction so far as they had a controlling influence on the manner in which the side lines should be extended from the Mississippi river towards Lake Maurepas, and as in so doing neither the treaty of 1803 nor any act of Congress, or authority exercised under the United States, was drawn in question this court has no jurisdiction to revise the decision of that court; for which reason the cause must be dismissed."

Baldwin *v.* Starks, 17 Otto, 463; XXVII, 526, was wholly unlike the case at bar, as shown by the following extract from the opinion of the court:

"This is a writ of error to the supreme court of the State of Nebraska and the jurisdiction of this court is questioned.

112 "The substance of the original bill in the State court is that in a contest for the right to enter a tract of land between Starks and Van Pelt, before the Land Department, the Secretary of the Interior erroneously decided in favor of Van Pelt, to whom a patent was issued; and the prayer of the bill is that Baldwin, who holds under Van Pelt, shall be decreed to hold the title in trust for Starks and convey it to him, and be enjoined from prosecuting further an action of ejectment against plaintiff which he has commenced for the land in controversy. That the decree which granted this relief denied to plaintiffs in error the right which they asserted under the patent from the United States, and was a decision against the title so asserted, and is therefore within section 709 of the Revised Statutes, is too well settled by numerous similar cases decided in this court to admit of further question."

To show at a glance the precise point of this decision I quote that part of said section 709 pertinent thereto, as follows: "A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, * * * where any title * * * is claimed under the Constitution or any treaty or statute of or commission held or authority exercised under the United States, and the decision is against the title * * * specially set or claimed by either party under such Constitution treaty, statute, commission, or authority, may be re-examined and reversed or affirmed in the Supreme Court upon a writ of error."

Thus it will be seen that the ground on which Federal jurisdiction rested was that plaintiffs in error relied on their patent as an authority emanating from the United States, about whose validity

there was real, substantial controversy, and the decision of
113 the State court was against the title so claimed. Undoubtedly the case was within the provision which I have quoted from said section 709 of the Revised Statutes of the United States.

Owings *v.* Norwood's Lessee, 5 Cranch, 344; III, 120, was ejectment, originally brought in the State courts of Maryland between citizens of said State, in which defendant set up an outstanding title in a British subject, one Jo*h*nathan Scarth, which title, defendant contended, was protected by the treaty of peace with Great Britain of 1794 against the confiscatory acts of the State of Maryland, through which plaintiff claimed, and therefore that the title to said land was out of the plaintiff. The court of appeals of Maryland, being the highest court of law and equity in that State, decided against the title thus set up. On writ of error the Supreme Court of the United States held that said action was not a case arising under the treaty, for the reason that Scarth was not a party to the suit, and that neither his title nor that of any person claiming under him could be affected by the decision of the case, and the writ of error was accordingly dismissed.

From the opinion of the court complainants' counsel quote the following: "Whenever a right grows out of or is protected by a treaty, it is sanctioned against all the laws and judicial decisions of the States, and whoever may have this right, it is to be protected; but if the person's title is not affected by the treaty; if he claims nothing under a treaty, his title cannot be protected by the treaty. If Scarth or his heirs had claimed, it would have been a case arising under a treaty; but neither the title of Scarth nor of any person claiming under him could be affected by the decision of this cause." In determining the scope of those words in the quotation upon which complainants seem to rely, namely, "Whenever a right
114 grows out of or is protected by a treaty, it is sanctioned against all the laws and judicial decisions of the States;" and, "If Scarth or his heirs had claimed, it would have been a case arising under a treaty," it must be remembered that in the supposititious case to which the words apply there would have been not only a claim of protection by, but a real, substantial controversy over the construction of, the treaty. Furthermore, said words were observations of the court, outside the facts of the case, and cannot be accepted as authority to overturn principles enunciated in later cases and upon facts requiring the application of such principles.

In Kansas Pacific Railway Company *v.* Atchison, Topeka and Santa Fe Railroad Company, 112 U. S., 414–423; XXVIII, 794, the third paragraph of the syllabus is as follows: "A controversy arises upon laws of the United States where two corporations claim title to the same land under different acts of Congress, and the decision depends upon the construction given to those acts." Obviously no such facts exist here.

The United States *v.* Zephaniah Kingsley, 12 Peters, 475; IX, 1163, was a petition for confirmation of certain lands in east Florida, which petitioner alleged had been granted to him on the 20th of November, 1816, while east Florida was held by the Crown of

Spain. The grant was conditional, and the only issue in the case was whether or not the condition had been complied with. The Supreme Court on appeal declared, among other things, that in maintaining rights of property protected by the Florida treaty reference should be had to "those laws and customs by which such rights were secured before Florida was ceded, or by which an inchoate right of property would by those laws and customs have been adjudicated by the Spanish authorities to have become
115 a perfect right." No question whatever was made as to the jurisdiction of the court. The case, undoubtedly, was one of Federal cognizance, not, however, because in determining its issues Spanish laws and customs were to be applied, but because the jurisdiction was expressly conferred by the sixth section of the act of Congress of May the 23rd, 1828, entitled "An act supplementary to the several acts providing for the settlement and confirmation of the private land claims in Florida" (4 U. S. Stat. L., 285), the tract of land claimed by the petitioner containing a larger quantity of land than the commissioners referred to in said several acts were authorized to decide upon by any of said acts.

The other authorities cited by complainants are numerous, and would unnecessarily prolong this opinion to further pursue their examination in detail. It is sufficient to say that, to my mind, al of them are readily distinguishable from, while none impair the force of, Phillips *v.* Association and Powder Works *v.* Davis, *supra*, upon which last two cases, as already indicated, I rest my decision of the point now under consideration.

Second. The other question involved in the motion to dismiss relates to the effect of defendant's disclaimer.

Complainants contend that said disclaimer does not disturb the Federal jurisdiction apparent upon the face of the bill, because, among other reasons, of the qualifying words in said disclaimer as to the vested rights of complainants and other private parties. This contention is expressed at page 9 of Complainants' Brief, as follows: "And when it disclaims having acquired rights which were vested in any private parties by those acts it manifestly means, and cannot be construed otherwise than as meaning, simply that it claims that no private party had any private rights to be affected by the
116 grant." While the disclaimer embraces what is thus suggested by complainants, it goes further and concludes the defendant, if there were rights vested in private persons at the passage of said acts of the legislature, from asserting title through said acts as against said vested rights.

Furthermore, this suit is one to quiet title, and complainants, for cause of action, allege ownership of the property, defendant's claim thereto, and that said claim is unfounded. According to my previous rulings herein, the only ground of Federal jurisdiction grows out of the allegations of the bill that one of the claims of the defendant is that certain acts of the legislature of California attempt to transfer to it the title held by complainants at the time of their passage, and that said acts, if construed as supporting such claim, are repugnant to the Constitution of the United States. Now, if

the defendant claims for said acts no other effect than that they transfer to or continue in the city of Los Angeles, as the successor in law of the Mexican pueblo of Los Angeles, only those rights which belonged to the latter, then said acts, if construed as supporting said claim, do not impair or affect any vested rights of complainants, and therefore are not repugnant to the Constitution of the United States; and it makes no difference, so far as this question is concerned, that defendant claims that the property in question at the time of the passage of said acts was the property of said pueblo, and denies that under the laws of Spain and Mexico the waters percolating in the soil of the Ranchos San Rafael and Los Feliz passed by the grants of said ranchos. Such claim and denial by the defendant do not, for their support, require any construction of said acts of the legislature which would make them repugnant to the Constitution of the United States.

117 Under the circumstances of this case it cannot be that a technical disclaimer—that is, such an absolute renunciation of title as by the general rules of equity pleading and practice would authorize a decree without costs quieting complainants' title as against the defendant—is necessary to overcome the jurisdictional allegations of the bill. It is sufficient for this purpose if the answer renounces that particular claim of title which is alleged in the bill as the ground of Federal jurisdiction. These jurisdictional allegations, as already stated, are to the effect that defendant makes a particular claim, namely, that certain acts of the legislature of California transfer to it property which at the date of said acts belonged to complainants' grantors. Obviously, if the defendant makes no such claim, although it does assert ownership through other sources, the ground of Federal jurisdiction alleged in the bill does not exist.

This is precisely the situation presented by the answer of the defendant, The City of Los Angeles, and brings the case within the principle announced in Robinson *v.* Anderson, 121 U. S., 522–524; XXX, 1021. In that case the court says: "Upon the pleadings the court dismissed the suit evidently for the reason that it did not 'really and substantially involve a dispute or controversy within the jurisdiction' of that court. Such was the clear duty of the court under the act of 1875, unless from the questions presented by the pleadings it distinctly appeared that some right, title, privilege, or immunity on which the recovery depended would be defeated by one construction of the Constitution or some law or treaty of the United States or sustained by an opposite construction. (Starin *v.* New York, 115 U. S., 257; XXIX, 390.)

118 "Even if the complaint, standing by itself, made out a case of jurisdiction, which we do not decide, it was taken away as soon as the answers were in, because if there was jurisdiction at all it was by reason of the averments in the complaint as to what the defenses against the title of the plaintiffs would be, and these were of no avail as soon as the answers were filed and it was made to appear that no such defenses were relied on. The circuit court cannot be required to keep jurisdiction of a

suit simply because the averments in a complaint or declaration make a case arising under the Constitution, laws, or treaties of the United States, if, when the pleadings are all in, it appears that these averments are immaterial in the determination of the matter really in dispute between the parties." * * *

Complainants in their brief, at pages 36 and 37, say: "So it will be seen that the disclaimer is of exactly the same kind as in the other suit. It does not disclaim. It asserts the ownership of all these waters by virtue of its ownership of the land as the successor of the pueblo, claiming that under the laws of Spain and Mexico this sweeping and universal right passes to them by virtue of the operation of those laws upon the Mexican grant and the United States patent, and it does not claim that the legislature passed any rights belonging to the defendants or their predecessors, but it does assert that the defendants and their predecessors do not have any right. Now, it is perfectly obvious upon that statement of the case alone that a Federal question is involved. Suppose the State court decides that they have no such rights, is that not a decision against a right or title claimed under the United States patent, and also that it proceeds from the Spanish and Mexican governments and is protected by the treaty?" The infirmity of this argument lies in the assumption that the fact of a title being derived through a patent or protected by a treaty of the
119 United States is "title claimed under" such patent or treaty, whereas the courts uniformly hold that this phraseology, as employed in section 709 of the Revised Statutes, as well as the constitutional and legislative grants of original jurisdiction, implies not merely derivation of title through a patent or protection from a treaty, but a real, substantial controversy over such patent or treaty. Thus the Supreme Court of the United States has expressly declared: "When a suit does not really and substantially involve a dispute or controversy as to the effect or construction" of the Constitution, "upon the determination of which the result depends, then it is not a suit arising under the Constitution. * * * The judicial power extends to all cases in law and equity arising under the Constitution, and these are cases actually and not potentially arising, and jurisdiction cannot be assumed on mere hypothesis. In this class of cases it is necessary to the exercise of original jurisdiction by the circuit court that the cause of action should depend upon the construction and application of the Constitution, and it is readily seen that cases in that predicament must be rare. Ordinarily the question of the repugnancy of a State statute to the impairment clause of the Constitution is to be passed upon by the State courts in the first instance, the presumption being in all cases that they will do what the Constitution and the laws of the United States require (Chicago & A. R. Co. *v.* Wiggins Ferry Co., 108 U. S., 18; XXVII, 636), and, if there be ground for complaint of their decision, the remedy is by writ of error, under section 709 of the Revised Statutes. Congress gave its construction to that part of the Constitution by the twenty-fifth section of the judiciary act of 1789, and has adhered to

it in subsequent legislation." (City of New Orleans *v.* Benja-
120 min, 153 U. S., 654; XXXVIII, 764.)

Complainants further contend that there is no disclaimer as to the act of the legislature of California to incorporate the city of Los Angeles, passed April the 4th, 1850. The answer of defendant, however, on page 11, lines 27 to 39, disclaims not only as to the acts of the legislature particularly pleaded in the bill, but also as to all other acts of the legislature. Another and complete reply to this contention of complainants is that the bill nowhere alleges that defendant claims through said act of 1850, and therefore, conceding that the court can take judicial notice of it, the act is not material to the case made by the pleadings.

Complainants further contend that defendant's attorneys were without authority to file the disclaimer. This contention, I think, is not well taken. (Connett *v.* Chicago, 114 Illinois, 233; Brooks *v.* New Durham, 55 N. H., 559; City of Pasadena *v.* Stimpson, 91 Cal., 238; San Francisco Gas Co. *v.* San Francisco, 9 Cal., 473.)

After full consideration of the bill and answer, it is clear, to my mind, that the controversy between the parties to this litigation concerns the rights, respectively, acquired by their predecessors in interest, under Mexican and Spanish laws, prior to the treaty of Guadalupe Hidalgo, and that the decision of the case does not require the construction of the Constitution or any treaty or statute of or authority exercised under the United States.

Defendant's motion allowed and suit dismissed without prejudice for want of jurisdiction.

OLIN WELLBORN, *Judge.*

121 (Endorsed:) No. 583. U. S. circuit court, ninth circuit, southern district of California. The Crystal Springs Land and Water Company *et al. v.* The City of Los Angeles. Filed Jul-9, 1897. Wm. M. Van Dyke, clerk.

122 In the Circuit Court of the United States for the Southern District of California.

THE CRYSTAL SPRINGS LAND & WATER COMPANY and S. G. MURPHY, Complainants,
*vs.*
THE CITY OF LOS ANGELES, Defendant.
} No. 583. In Equity.

*Assignment of Error.*

And now, on the 19th day of October, 1897, come the complainants, by J. S. Chapman and White & Monroe, their colicitors, and say the decree in said plea is erroneous and against the just rights of said complainants for the following reasons:

First. Because the court erroneously dismissed the said bill and the said suit on the ground, as stated by the court, that said court had no jurisdiction of said suit.

Second. Because it appeared by the bill of complainants herein

that the said court had jurisdiction of the suit, and the court erroneously dismissed the said bill and the said suit.

Third. Because it appeared by the bill and answer in said suit that this court had jurisdiction of the said suit, and said court erroneously dismissed the said bill and suit for alleged lack of jurisdiction.

Fourth. Because it appeared by said bill and answer that the suit involves the construction and application of the Constitution of the United States, but, notwithstanding, the court dismissed the said bill and suit.

Fifth. Because the court erroneously granted the motion
123 of defendants to dismiss the said bill and suit for want of jurisdiction.

Sixth. Because it appeared by said bill that the construction of the treaty made by the United States and under its authority was drawn in question.

Seventh. Because it appeared by said bill in said suit that certain of the laws of the State of California were claimed to be in contravention of the Constitution of the United States.

Eighth. Because the court erroneously decided that the answer in said suit contained a disclaimer of title under the statutes of the State of California sufficient to oust the jurisdiction of this court.

Ninth. Because the court erroneously dismissed the bill, although it appeared by said bill that a Federal question was involved.

Wherefore the said complainants pray that said decree be reversed, and that said court be directed to set aside the decree dismissing the bill herein, and to render a decree in favor of complainants in accordance with the prayer of the bill.

J. S. CHAPMAN,
WHITE & MONROE,
*Solicitors for Complainants.*

(Endorsed:) No. 583. Circuit court of the United States, ninth circuit, southern district of California. The Crystal Springs Land and Water Company and S. G. Murphy, complainants, *vs.* The City of Los Angeles, defendant. Assignment of error. Filed Oct. 19, 1897. Wm. M. Van Dyke, clerk, by E. H. Owen, deputy. White & Monroe, rooms 11–13, Temple block, Los Angeles, solicitors for complainants.

124 In the Circuit Court of the United States for the Southern District of California.

THE CRYSTAL SPRINGS LAND & WATER COMPANY and S. G. MURPHY, Complainants,
*vs.*
THE CITY OF LOS ANGELES, Defendant.
} In Equity. No. 583.

*Petition for Appeal.*

The above-named complainants, The Crystal Springs Land & Water Company and S. G. Murphy, conceiving themselves ag-

grieved by the order and decree made and entered on the 12th day of July, 1897, in the above-entitled proceeding, do hereby appeal from said order and decree to the Supreme Court of the United States for the reasons specified in the assignment of errors, which is filed herewith, and they pray that this appeal may be allowed, and that a transcript of the record and proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated Oct. 19th, 1897.

J. S. CHAPMAN,
WHITE & MONROE,
*Solicitors for Complainants and Appellants.*

And now, to wit, on Oct. 19th, 1897, it is ordered that the appeal be allowed as prayed for.

Dated Oct. 19th, 1897.

OLIN WELLBORN, *Judge.*

125 I hereby certify that the jurisdiction of this court was in issue in this case, and the question of such jurisdiction alone is certified to the Supreme Court for decision.

October 19th, 1897.

OLIN WELLBORN, *Judge.*

(Endorsed:) No. 583. Circuit court of the United States, ninth circuit, southern district of California. The Crystal Springs Land & Water Co. & S. G. Murphy, complainants, *vs.* The City of Los Angeles, defendant. In equity. Petition for appeal. Filed Oct. 19, 1897. Wm. M. Van Dyke, clerk, by E. H. Owen, deputy. J. S. Chapman, White & Monroe, rooms No. 11–13, Temple block, Los Angeles, Cal., solicitors for complainants & appellants.

126 At a stated term, to wit, the August term, A. D. 1897, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the southern district of California, held at the court-room, in the city of Los Angeles, on Tuesday, the 19th day of October, in the year of our Lord one thousand eight hundred and ninety-seven.

Present: The Honorable Olin Wellborn, district judge.

THE CRYSTAL SPRINGS LAND AND WATER COMPANY and S. G. MURPHY, Complainants,
*vs.*
THE CITY OF LOS ANGELES, Defendant.
} No. 583.

The said complainants, The Crystal Springs Land and Water Company and S. G. Murphy, having this 19th day of October, 1897, being a day in the August term, A. D. 1897, of said circuit court, by Charles Monroe, Esq., of counsel for complainants, prayed an appeal to the Supreme Court of the United States to reverse the decree heretofore, to wit, on the 12th day of July, A. D. 1897, being

a day in the January term, A. D. 1897, of the said circuit court, filed and entered of record in said circuit court, and having herewith presented and filed a petition for appeal, assignment of errors, and bond for costs approved by the court, and it appearing that the matter in dispute in said cause, exclusive of costs, exceeds the sum or value of five thousand dollars ($5,000), and that the complainants herein are entitled to the allowance of an appeal, having taken the said appeal within the time allowed by law, it is ordered
127 that the said complainants be, and hereby are, permitted and allowed to prosecute an appeal to the Supreme Court of the United States from the said final decree filed and entered as aforesaid.

128 In the Circuit Court of the United States for the Southern District of California.

THE CRYSTAL SPRINGS LAND & WATER COMPANY and S. G. MURPHY, Complainants,
*vs.*
THE CITY OF LOS ANGELES, Defendants. } No. 583. Bond.

Know all men by these presents that we, W. J. Brodrick and S. H. Mott, both of the city of Los Angeles, county of Los Angeles, State of California, are held and firmly bound unto the above-named City of Los Angeles in the sum of one thousand dollars, to be paid to the said city of Los Angeles; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, *heirs*, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 19th day of October, in the year of our Lord one thousand eight hundred and ninety-seven.

Whereas the above-named Crystal Springs Land & Water Company and S. G. Murphy have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of California:

Now, therefore, the condition of this obligation is such that if the above-named Crystal Springs Land & Water Company and S. G. Murphy shall prosecute said appeal to effect and answer and
129 pay all costs if they fail to make such appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

W. J. BRODRICK.
S. H. MOTT.

STATE OF CALIFORNIA, }
*County of Los Angeles,* } *ss:*

W. J. Brodrick and S. H. Mott, being first duly sworn, each for himself says that he is a citizen and resident of the county of Los Angeles, State of California, and a freeholder therein; that he is

worth more than double the amount mentioned in the foregoing bond in property in the State of California, over and above all his just debts and liabilities and exclusive of property exempt by law.

W. J. BRODRICK.
S. H. MOTT.

Subscribed and sworn to before me this 19th day of October, 1897.

[SEAL.] WILLIAM CARDWELL,
*Notary Public in and for the County of Los Angeles, State of California.*

The foregoing bond and the sureties thereon are hereby approved this 19th day of October, 1897.

OLIN WELLBORN, *Judge.*

(Endorsed:) No. 583. Circuit court of the United States, ninth circuit, southern district of California. The Crystal Springs Land and Water Company and S. G. Murphy, complainants, *vs.* The City of Los Angeles, defendant. Bond. Filed Oct. 19, 1897. Wm. M. Van Dyke, clerk, by E. H. Owen, deputy. White & Monroe, rooms 11–13 Temple block, Los Angeles, solicitors for complainants.

130 In the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California.

THE CRYSTAL SPRINGS LAND AND WATER COMPANY and S. G. MURPHY, Complainants,
*vs.*
THE CITY OF LOS ANGELES, Defendant. } No. 583.

I, Wm. M. Van Dyke, clerk of the circuit court of the United States of America, of the ninth judicial circuit, in and for the southern district of California, do hereby certify the foregoing one hundred and twenty-nine typewritten pages, numbered from 1 to 129, inclusive, and comprised in one volume, to be a full, true, and correct copy of the record, papers, opinions of the court, assignment of errors, and of all proceedings in the above and therein entitled cause, and that the same together constitute the transcript of the record on appeal to the Supreme Court of the United States in said cause.

I do further certify that the cost of the foregoing record is $77.20, and that the amount thereof has been paid me by The Crystal Springs Land and Water Company and S. G. Murphy, the appellants in said cause.

Seal U.S. Circuit Court, Southern Dist. Cal., 1886.

In witness whereof I have hereunto set my hand and affixed the seal of said circuit court of the United States of America, of the ninth judicial circuit, in and for the southern district of California, this 4th day of

December, in the year of our Lord one thousand eight hundred and ninety-seven, and of the Independence of the United States the one hundred and twenty-second.

WM. M. VAN DYKE,
*Clerk of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California.*

Endorsed on cover: Case No. 16,751. S. California C. C. U. S. Term No., 538. The Crystal Springs Land and Water Company and S. G. Murphy, appellants, *vs.* The City of Los Angeles. Filed December 16th, 1897.

No. 41.

# BRIEF FOR APPELLANTS

Brief of Garber & White for Appts.

SUPREME COURT OF THE UNITED STATES

October Term, 1899

Filed Oct. 10, 1899

No. 41

Supreme Court U.
FILED
OCT 10 1899
JAMES H. McKENNEY,
Clerk

THE CRYSTAL SPRINGS LAND AND WATER COMPANY AND S. G. MURPHY, APPELLANTS,

vs.

THE CITY OF LOS ANGELES, RESPONDENTS.

WHITE & MONROE, and
JOHN GARBER,
*Attorneys for Appellants,*

WALTER F. HAAS,
City Attorney of Los Angeles City, and
LEE & SCOTT,
*Attorneys for Respondents.*

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

FILED OCTOBER , 1899

(16,751)

IN THE

# SUPREME COURT

OF THE

UNITED STATES.

CRYSTAL SPRINGS LAND AND WATER COMPANY and S. G. MURPHY.
*Complainants and Appellants,*
*vs.*
THE CITY OF LOS ANGELES,
*Defendant and Respondent.*

## BRIEF FOR THE PLAINTIFF.

STATEMENT OF CASE.

I.

The sole question raised on this appeal is the jurisdiction of the Circuit Court, and as all the parties are citizens of the State of California the jurisdiction depends upon whether or not a federal question is involved.

On the 22d of March, 1843, the Mexican Governor of the Californias granted to Maria Ignacia Berdugo a tract of land now in Los Angeles county, California, known as the Rancho Los Feliz, which tract is bounded on the south by the northern boundary of the city of

Los Angeles. The claim under this grant was presented to the Board of Commissioners appointed to ascertain and settle private land claims in the State of California. On the 26th of October, 1852, the claim was confirmed by the Board, which decision was affirmed by the United States District Court for the Southern District of California at its December term in 1856, and it was therein decreed that the lands of which confirmation was made were situated in the county of Los Angeles, known by the name of Los Felis, and being the same lands granted by Manuel Micheltorena on the 22nd of March, 1843, and bounded on the north by the lands of Julio Verdugo, on the south by the river Los Angeles, on the east by the ranch of Juana Moreno and on the west by the mountains; and the premises were subsequently surveyed under the authority of the United States, and on the 18th of April, 1871, a patent was issued by the United States to the said Maria Ignacia Verdugo, granting to her the said Rancho Los Felis. (Tr. p. 2.)

On the 20th of October, 1784, a grant was made by Pedro Fajes, the Spanish Governor of the Californias, to Julio Verdugo and others of a tract of land of eight square leagues, bounded on the western side by the Los Angeles river, and known as the San Rafael Rancho, which grant was confirmed on the 12th of January, 1798, and after the acquisition of the State of California by the United States, it was presented to and confirmed by the Board of Land Commissioners aforesaid on the 11th day of September,

1855, and by the District Court on June 4th, 1857, and on the 28th of January, 1882, a patent was issued by the Government of the United States conveying said tract of land to the claimant. (Tr. p. 3.)

On the 26th of October, 1852, the Mayor and Common Council of the city of Los Angeles (which was at that time the corporate name of the city) filed a claim with the Board of Commissioners, claiming the confirmation of the title of the city to a tract of land containing 16 square leagues and designated as the city of Los Angeles, situated in the county of that name, and which claim was founded on a Mexican grant to the petitioners, made on the 25th of August, 1844, by Manuel Micheltorena, the then Governor of the department of the Californias.

On the 5th of February, 1856, the Commissioners rendered a decree confirming the claim in part, to wit: to 4 square leagues of land, and rejected the remainder. From this decree both the city and the United States appealed to the District Court aforesaid, but the appeals were dismissed, and the city permitted to proceed under the said decision as under a final decree.

Thereafter there was a survey made of the 4 square leagues and a patent was issued on the 9th day of August, 1866, from the United States to the city of Los Angeles for the said lands. (Tr. pp. 3 and 4, fols. 5 and 6.)

The Los Angeles river rises in the mountains to the north of the city of Los Angeles and of the lands patented to the city, and flows through

the said Rancho Los Felis and the Rancho San Rafael from the north to the south, and forms the common boundary of the said two ranchos for a considerable distance, and thence flows into the city of Los Angeles, which lies to the south, and through the lands described in the patent to the Mayor and Common Council, enteriug the city near the middle point of the northern boundary, and flows in a southerly direction through the city. (Tr. p. 4, fol. 6, par. IV of the Bill.)

The plaintiff, the Crystal Springs Land & Water Company, is the owner of 4.9 acres of land, part of what was known as the Crystal Springs tract, the whole of which tract was situated in the Los Felis Rancho. (Bill, par. V, p. 4, fols. 6 and 7.) Prior to the 14th of June, 1886, G. J. Griffith was the owner of the 4900 acres of the Los Felis Rancho, deriving his title through the patent of the United States to the Mexican grantee, and which tract owned by Griffith comprises all the lands of the Los Felis Rancho mentioned in the complaint, except the 4.9 acres of the Crystal Springs tract. On the 14th of June, 1886, Griffith conveyed to the Los Angeles City water Company the right to develop water upon all of the tract known as the Crystal Springs tract, (which was originally a tract of over 14 acres), except the 4.9 acres, which already belonged to the Crystal Springs Company, and also conveyed the right to develop water on the other portions of the Los Felis Rancho, bounded on the northwest by the southeasterly boundary of the

Crystal Springs tract and ranging north 11-¾ degrees east, and its prolongation to the northward to the intersection with the eastern boundary of the Rancho de Los Felis, and on the southeast by a line parallel thereto and distant from it 1000 feet, bounded on the southwest by the ditch then in course of construction from the Crystal Springs tract to the Los Angeles river, and the northeast by the eastern boundary line of the Rancho de Los Felis; and afterwards granted to the Crystal Springs Land and Water Company the right to develop water upon other portions of the Los Felis Rancho belonging to him, and in which certain pipes described in the bill were laid, the right of development being upon certain portions of the Los Felis Rancho described as water bearing lands (Tr. pp. 4 and 5, par. VI, of the bill, fols. 7 and 8.) These rights conveyed to the Los Angeles City Water Company were acquired by the Crystal Springs Land & Water Company afterwards; and prior to the commencement of this suit the Crystal Springs Land & Water Company acquired the title to a tract of land, part of the San Rafael Rancho. (*Id.* par. VI, fol. 8.)

It is further stated by the bill that north of the city and extending up the Los Angeles river to a point commencing about half a mile above the north boundary of the city and a distance of 15 or 20 miles, the valley of the Los Angeles river varies in width from about a mile to two or three miles, and that upon the Los Felis Rancho and the San Rafael Rancho is a large body of

land containing about 500 acres in which a large amount of water is percolating, and that in the said tract of land, part of the Los Felis and San Rafael Ranchos, as well as in other lands lying on both sides of the Los Angeles river, and stretching to the northward, there is an immense quantity of water percolating through the soil, and that it belongs to the owners of the said soil. (*Id.* par. VIII, fols. 8 and 9.)

The Crystal Springs Land & Water Company having acquired the title to the tracts of land in the Los Felis and San Rafael Ranchos, and the rights of development therein, excavated a ditch or tunnel from the Crystal Springs in the Crystal Springs tract in a southeasterly direction to a point known as the gate house, and a tunnel from the gate house northerly through a portion of the Los Felis Rancho and the said San Rafael Rancho, and in said excavations laid water pipe, and by means of which excavations it gathered together of the percolating waters of the said lands a large amount, to wit: 700 inches of water measured under a four-inch pressure, and by means of the pipes so laid, conducted the same to the gate-house, at which point the waters from the said pipes unite together, and are thence conveyed through pipes to the City of Los Angeles, for the purpose of furnishing the inhabitants of the city with water for domestic purposes, and furnishing the City of Los Angeles with water for flushing sewers, extinguishing fires, sprinkling the streets, and other public uses. (*Id.* par. IX, p. 6, fols. 9 and 10.)

This development was all done upon lands

which either belonged to the Crystal Springs Land and Water Company, or through those tracts upon which it had acquired the right to make such developments. By the deeds of the said G. J. Griffith, the owner of the said lands, granting the right to make such developments, and the ownership of its lands and the actual development of the waters, the Crystal Springs Land & Water Company alleges that it is, and ever since the development, has been the owner of the water and of the pipes, but subject to the rights of Murphy, one of the plaintiffs, who is the trustee under a trust deed made to secure the payment of certain bonds issued by the Crystal Springs Land & Water Company. (*Id.* par. X, p. 6, fol. 10.) (See also pars. 11, 12, 13 and 14 of the bill, fols. 10-12.)

It is then alleged that under the laws of Spain and Mexico, the grantees of the said grants made by the Spanish and Mexican Government of the said Ranchos San Rafael and Los Felis, became the owners of the waters percolating in the soil, as part and parcel of the said lands, and that the title of the plaintiff's is derived from, through and under the said Spanish grants, and the confirmation thereof by the United States authorities and the patents issued by the United States; and they claim that the rights of property thus acquired are protected by the treaty of Guadalupe Hidalgo between the United States and the Republic of Mexico, and that their title to the said water and rights to the use thereof were confirmed by the United States by and through

the proceedings before stated. (*Id.* p. 8, Par. XV.)

It is also alleged that above the Los Felis and San Rafael Ranchos there are other lands claimed from the Mexican or Spanish government by private parties, through which the Los Angeles river flows, and that there are still other lands both north and south of the patent boundaries of the city of Los Angeles, which became vested in the United States upon the acquisition of the State of California from the Mexican government, and through which said river flows, which have since said time been acquired by private parties from the United States government, and patents issued therefor, and that as to these public lands and private grants, the grantees and the United States were riparian owners, and entitled to the use of the waters of the stream as such, and that as owners of the said land, were entitled to waters percolating into the soil, whether ultimately finding their way into the Los Angeles river or not. (*Id.* p. 8, Par. XVI.)

The lands in which these excavations have been made are all in the Los Felis and San Rafael Ranchos, and the title of the complainants and right to make these developments and the ownership of the said waters comes through those Mexican grants and the confirmation thereof, and the United States patents following such confirmation

These developments have all been made on a tract of land embracing about 500 acres, through which the Los Angeles river flows, but the bed

thereof, upon this tract, is not anywhere to exceed 100 feet in width. (Tr. p. 8, Par. XVII, Fols. 13 and 14.) This tract contains a vast quantity of percolating water extending to a depth of more than 100 feet, and the developing and taking of these percolating waters does not affect the flow of the Los Angeles river. (*Id.* p. 9, Par. XVII, Fol. 14.)

On the 26th of March, 1874, the Legislature of the State of California passed an act entitled, "an act to amend the charter of the city of Los Angeles, to define its limits and rights, to enlarge its powers and provide for its more efficient government"; and among other things this act attempted to grant to the city of Los Angeles certain rights, and it did declare that there was thereby granted to the said city, to be held by it and enjoyed in obsolute ownership the full, free and exclusive right to all of the water flowing in the Los Angeles river at any point from its source or sources to the intersection of the said river with the southern boundary of the city, and the right to economically use and utilize all waters flowing beneath the surface in the bed of said river, at any point or points between the points of termini therein above given, to wit: from the source or sources of the river to the south boundary of the city. But by this act there was excepted and reserved from the operation of the said grant of the water flowing in the said river, unless the same should be condemned and taken for public use, all vested private rights to the water flowing upon the sur-

face or beneath it in the bed of said river. (*Id.* Par. XIX, p. 9.)

On the first day of April, 1876, the Legislature of California passed another act amending the charter of the city and granting the same rights with respect to the waters of the Los Angeles river and all waters flowing beneath the surface in the bed of the river, which was in the same terms as in the act of 1874. (Tr. p. 9 and 10, Par. XX.)

On the 30th of March, 1878, another act was passed by the said Legislature entitled "An act to amend an act entited, an act to revise an act, entitled an act to amend the charter of the city of Los Angeles, to define its limits and rights, to enlarge its powers and provide for its more efficient government, approved April 1st, 1876", whereby the Legislature undertook to grant the same rights to the city concerning the waters, both of the Los Angeles river and the waters flowing beneath its bed, and without any exception in favor of private rights as had been made in the act of 1874 and 1876. (Tr. pp. 17 and 18, fols. 30 and 31.)

The City of Los Angeles as alleged in the bill, claims that as the successor of the Mexican pueblo of Los Angeles, and by virtue of the laws of Spain and Mexico governing, regulating and fixing the rights of a pueblo in the waters of streams flowing through the said pueblos, and by the said several acts of the Legislature purporting to grant to the City of Los Angeles the sole and exclusive right to the waters of the Los Angeles river which stream is an innavigable stream,

flowing through the city, is the sole and exclusive owner of all the waters flowing in the Los Angeles river from its sources to the southern boundary of said city, and of the sole and exclusive right to develop waters percolating under the bed of said river or elsewhere, which flow into or become a part of the waters of the said Los Angeles river, and that the Crystal Springs Land & Water Company made the excavations and developed the water without right, and that the same belongs to the City of Los Angeles; and the city claimed that the whole space between the basis of the mountains upon each side of the river, above the northern boundary of the city, including the tract upon which this development has been made and the pipes laid, constitutes a portion of the bed of the Los Angeles river within the meaning of the said acts of the Legislature of the State of California, and that all of the waters percolating in the said soil belong to the said City of Los Angeles, and it has the sole and exclusive right to develop the waters percolating in the said lands, under and by virtue of the acts of the Legislature aforesaid, and that the developments so made by the plaintiffs were without right, and the waters so developed and flowing in the pipes belong to the City of Los Angeles, and that neither of the complainants has any right, title or interest therein. (Par. XXIII, pp. 10 and 11, fols. 16–18.)

Then follow the allegations of the bill that these claims of the City of Los Angeles are false; that the value of the property in controversy is

greatly in excess of the sum of $2000.00, and is of the value of more than $1,000,000.00. (Tr. p. 11, Par. XXIV.)

It will be noted that it was alleged that the development work and laying the pipes was completed sometime in the year 1890. (Par. XXIII, p. 10, fol. 16.)

The bill was demurred to (Tr. pp. 13 and 14) upon the ground that the court had no jurisdiction of the subject matter, and that the bill did not state facts sufficient to entitle plaintiffs to any relief against the defendant, and a plea to the jurisdiction was interposed, set out in Tr. pp. 14–16. The demurrer was argued before the court, and submitted on the 2nd day of January, 1896, on which day, by leave of the court, an amendment to the bill was permitted, setting forth the act of the Legislature of the State of California, of March 30th, 1878. (Tr. pp.17 and 18,to which,at the same time a demurrer was interposed, (P. 18, fols. 32 and 33) and on the 3rd day of August, 1896, the court rendered its decision overruling the demurrer. (Tr. pp. 19 and 20, fols. 34 and 35.)

On October 16th, 1896, the defendant filed its answer (Tr. pp. 20–41) and on the 14th of November, 1896, the replication was filed. (Tr. p. 41, fols. 73 and 74.) Upon the coming in of this answer a motion was made to dismiss the bill upon the ground that it appeared from the bill of complaint and the answer of the defendant that the court has no jurisdiction in the cause, and that the said suit does not really and substantially involve a dispute or controversy

properly within the jurisdiction of said Circuit Court, which motion to dismiss was argued and submitted to the Court, and by the Court sustained. (Tr. p. 42, fols. 75 and 76), and thereupon, on the 12th day of July, 1897, a judgment was entered dismissing the bill for want of jurisdiction. (*Id.* pp. 43 and 44, fols. 79 and 80)

The opinion of the Court is set forth in the transcript, pages 45 to 66.

An appeal was allowed and the judge certified that the jurisdiction of the court was in issue, and the question of such jurisdiction alone was certified to the Supreme Court for decision. (*Id.* pp. 68, fol. 125.)

An assignment of errors was filed. (*Id.* p. 66 and 67, fols. 121–123) and the bond given. The Court had overruled the demurrer to the bill upon the ground that the averments thereof with respect to the acts of the Legislature of the State of California set forth in the bill attempting to grant to the City of Los Angeles rights in the lands belonging to the complainant, did present a federal question, and the motion to dismiss was sustained upon the ground that the answer filed contained a sufficient disclaimer of any title under those acts, to defeat that jurisdiction.

## II.

The errors in the decision of the Court below asserted by the appellants, upon which they rely, and which they intend to urge before this Court are the following:

1. The Court erred in granting the motion

to dismiss the bill upon the ground that it had no jurisdiction.

2. The Court erred in deciding that the suit was not one arising under the treaty between the United States and Mexico, and that the construction of the treaty was not drawn in question by the said suit.

3. The Court erred in deciding that the suit was not one arising under the constitution or laws of the United States, and did not involve the construction of either.

4. The Court erred in construing the pretended disclaimer in the answer as being a disclaimer by the defendant of any right, title or interest by virtue of the statutes of California set forth in the bill.

5. The Court erred in construing the said disclaimer to be sufficient to oust the jurisdiction of the Court.

## III.

## POINTS AND AUTHORITIES.

### 1. The suit does arise under the treaty with Mexico and involve its construction.

As the treaty guarantees the protection of property rights as they existed at the time of the execution of the treaty, and does not create the rights, it would seem logically to follow that upon whomsoever this duty of protection rests must needs determine whether the right claimed exists and whether it comes within the treaty stipulation. This proposition seems to

be directly decided by this Court in many different cases.

In Martin v. Hunter's Lessee, 1st. Wheaton, 304, which was an action of ejectment, the original plaintiff claimed the land under a patent granted to him by the State of Virginia in 1789 under the title supposed to be vested in that state by escheat or forfeiture. The original defendant claimed the land as devisee under the will of Lord Fairfax, which title it was claimed was protected by the treaty of peace of 1783 (*Id.* p. 356). Said Judge Story, delivering the opinion, after stating the facts agreed upon:

"The title of the defendant was perfect and " complete if it was protected by the treaty of " 1783. If, therefore, this court had authority " to examine into the whole record, and to " decide upon the legal validity of the title of " the defendant, as well as its application to the " treaty of peace, it would be a case within the " express purview of the 25th section of the act " (referring to the Judiciary Act); for there was " nothing in the record upon which the court " below could have decided but upon the title " as connected with the treaty, and if the title " was otherwise good, its sufficiency must have " depended altogether upon its protection under " the treaty. Under such circumstances it was " strictly a suit where was drawn in question " the construction of a treaty, and the decision " was against the title specially set up or claimed by the defendant. It would fall, then, within the very terms of the act.

"The objection urged at the Bar is, that this

" court cannot inquire into the title, but simply " into the correctness of the construction put " upon the treaty by the court of appeals; and " that their judgment is not re-examinable here, " unless it appears on the face of the record " that some construction was put upon the " treaty. If, therefore, that court might have " decided the case upon the invalidity of the " title (and *non constat*, that they did not) inde- " pendent of the treaty, there is an end of the " appellate jurisdiction of this court. In sup- " port of this objection, much stress is laid " upon the last clause of the section, which sec- " tion declares, that no other cause shall be re- " garded as a ground of reversal than such as " appears on the face of the record, and im- " mediately respects the construction of the " treaty, etc., in dispute.

"If this be the true construction of the sec- " tion, it will be wholly inadequate for the pur- " pose which it professes to have in view, and " may be evaded at pleasure. But we see no " reason for adopting this narrow construction; " and there are the strongest reasons against " it, founded upon the words as well as the in- " tent of the legislature. What is the case for " which the body of the section provides a " remedy by writ of error? The answer must " be in the words of the section: a suit where is " drawn in question the construction of a treaty " and the decision is against the *title set up by* " *the party*. It is therefore the decision against " the title set up with reference the treaty and " not the mere abstract construction of the

" treaty itself, upon which the statute intends to " found the appellate jurisdiction.

**"How, indeed, can it be possible to decide whether" "a title be within the protection of a treaty until it" "is ascertained what that title is and whether it" "have a legal validity?"**

"From the very necessity of the case, there "must be a preliminary inquiry into the exist- "ence and structure of the title before the court "can construe the treaty in reference to that "title. If the court below should decide that "the title was bad, and therefore not protected "by treaty, must not this court have power to "decide the title to be good, and therefore pro- "tected by the treaty? Is not the treaty, in both "instances, equally construed, and the title of "the party in reference to the treaty equally "ascertained and decided? Nor does the clause "relied on in the objection impugn the construc- "tion. It requires that the error upon which "the appellate court is to decide shall appear on "the face of the record, and immediately respect "the questions before mentioned in the section. "One of the questions is as to the construc- "tion of a treaty upon a title specially set up by "a party, and every error that immediately re- "spects that question must, of course, be within "the cognizance of the court."

*Id.*, 356–359.

The same thing was decided in Smith v. The State of Maryland, 6 Cranch 286, and in that case the court agreed with the state court that

the party had no title and therefore the treaty did not operate upon it, yet, nevertheless, the controversy did involve the construction of the treaty and was within the jurisdiction of the court.

Now, in our case, we allege that under the laws of Spain and Mexico, as well as the United States, the percolating waters belonged to the owner of the soil, and also that the grantees of these ranchos were entitled to the rights of a riparian owner in the waters of the stream. If such were the rights incident to and passing by the grants, which grants have been determined by the proper authorities of the United States to have been valid grants, then the property right is protected by the treaty, and the Federal Court not only has the power but must necessarily determine for itself whether those rights existed or not under the laws of Spain and Mexico.

Beard v. Federy, 3 Wall. 478;
Knight v. United States Land Association, 142 U. S. 161.

There one of the parties claimed under the State of California, the other under the city and county of San Francisco. Both claimed under the Mexican government. The lands in controversy were between high and low water mark. On the part of the grantee from the state it was claimed that the title to these lands passed from Mexico to the United States in trust for the future state, and that immediately upon the admission of California the title vested in it by virtue of its sovereignty. The other party claimed that, when the property was the prop-

erty of the Mexican government it had the power to grant the lands between high and low water mark. That it did grant them to the pueblo of San Francisco. That its claim had been confirmed, a survey had been made and a United States patent had been issued therefor, and which patent embraced the lands in controversy.

This court did consider the question of the power of the Mexican government in this respect, and decided that the title of the United States derived from the Mexican government was not held in trust for the future state, where the lands had already been granted or property rights in them had vested in other persons, and upheld the title springing from the pueblo.

In the course of the opinion Mr. Justice Lamar, among other things, said:

"For it is equally well settled that when the "United States acquired California from Mexico "by the Treaty of Guadalupe Hidalgo, 9 Stat- "utes, 922, they were bound under the eighth "article of the treaty to protect all rights of "property in that territory emanating from the "Mexican government previous to that treaty. " * * * * Irrespective of any such pro- "vision in the treaty, the obligations resting "upon the United States in this respect, under "the principles of international law, would have "been the same. * * * * These observa- "tions lead directly to the determination of the "force and effect of the title of the pueblo of "San Francisco derived from the former govern- "ment of Mexico as opposed to the title which

"it is insisted passed to the state of California "upon its admission into the Union, by virtue "of its sovereignty over all tide lands in the "state below high water line, even including "such as are situated within the limits of the "pueblo."

See also San Francisco v. Leroy, 138 U. S. 656.

The court referred to the case of Weber v. Board of Harbor Commissioners, 18 Wall. 57, 65, where it had been held that the titles acquired by the United States to lands in California, under tide waters, from Mexico, were held in trust for the future state, so that their ownership and right of disposition passed to it upon its admission into the Union; but that that doctrine did not apply to such lands as had been previously granted to other parties by the former government, or subjected to trusts which would require their disposition in some other way.

Now in these cases the very question in controversy was what rights had the Mexican government, and what rights did pass from the United States as the successor of that government. This necessarily involved an inquiry into the Mexican law, the relations of the Federal Government to the Mexican government with respect to the title to the property, and with respect to the contending parties, and what title those parties acquired, both from the Mexican grant, and also from the act of Congress of the United States, and the patent issued to the city and county of San Francisco on the one

hand, and the rights acquired by the beneficiary of this trust which it was claimed attached to the property in the hands of the United States in its favor.

In Steinbach v. Lewis, 11 Wall. 506, it was said that the effect of a grant of land made in California before it was ceded to the United States must be determined by Mexican law.

It is further well settled that whatever rights remained in the Mexican government with respect to the property granted passed to the United States as the successor of the Mexican sovereighty, and by the treaty of cession, and passed from the United States government by its patent, in its aspect of a deed, taking effect at the date of presentation, and hence what rights passed by that patent, and what are incidents of the title thus acquired depend both upon the laws of the United States and the laws of Mexico, and as to the rights accruing through the laws of Mexico, they are protected by treaty.

In Smith v. Maryland, 6 Cranch, 286, Justice Washington, delivering the opinion of the court, after stating that the question was as to the jurisdiction of Supreme Court of the United States, says:

"It is contended by the defendants in error " that the question involved in the cause turns " exclusively upon the construction of the con- " fiscation laws of the State of Maryland passed " prior to the treaty of peace, and that no ques- " tion relative to construction of that treaty, " did or could occur, that the only point in dis- " pute was whether the confiscation of the lands

" in controversy was complete or not by the " mere operation of those laws without any " further act to be done."

If the former, it was admitted on the one side that the right of Annie Ottey, a British subject, was not saved or protected by the treaty, and if the latter, then it was agreed on the other, that it was protected, and he said:

"This argument proves nothing more than " that the whole difficulty in this case depends " upon that part of it which involves the con- " struction of certain state laws, and that the " operation and effect of the treaty, which con- " stitutes the residue of the case is obvious so " soon as that construction is settled. But still " the question recurs: Is this a case where the " construction of any clause in a treaty was " drawn in question in a state court and where " the decision was against the title set up in " such treaty?

"The only title asserted by the defendants in " error to the lands in dispute is founded upon " an alleged confiscation by the State of Mary- " land, and the conveyance to them of the right " thus acquired by the state. The title set up " by the plaintiffs in error, for Annie Ottey, " and the only one which could possibly resist " that claimed by the grantees of the state, is " under the treaty of peace, the sixth article of " which protects her rights, provided the con- " fiscation by the laws of the state was not " complete prior to the treaty.

"The point to be decided was and is, whether " this be a case of future confiscation within the

" meaning of the sixth article of the treaty; and " in order to arrive at a correct result in the " decision of that point, it became necessary in " the state court, and will be necessary in this, " to inquire whether the confiscation declared " by the state laws was final and complete at " the time the treaty was made, or not. The " construction of those laws then is only a step " in the cause leading to the construction and " meaning of this article of the treaty; and it is " perfectly immaterial to the point of jurisdic- " tion that the first part of the way is the most " difficult to explore."

In Owings v. Norwood's Lessee, 5 Cranch, 344, the case was ejectment. The defendant was seeking to defeat the plaintiff, not by the strength of the defendant's title, but by the weakness of the plaintiff's. A mortgage had been made to one Jonathan Scarth, and the defendant below, in order to show an existing title out of the plaintiff, contended that the mortgage to Scarth was protected from confiscation by the British treaty of 1794, and was still a security for the money to the representatives of Scarth, who proved to be still living in England. The Maryland court was of the opinion that on the expiration of the time limited in the mortgage for the payment of the money, a complete legal estate of inheritance vested in the mortgagee liable to confiscation, and that it had become vested in the state by the confiscation act of 1780, subject to the right of redemption in the mortgagee and his heirs, and the British treaty was not made until after

the confiscation and did not affect the plaintiff's right to recover in the ejectment.

Marshal, Chief Justice, said there were only two points in the case:

"1. Whether Scarth had such an interest as was "protected by the treaty, and; 2. Whether the present "case be a case arising under a treaty within the mean- "ing of the constitution, and the Court had no doubt on "either point. That the plaintiff in error did not con- "tend that his right grew out of the treaty, and whether "it was an obstacle to the plaintiff's recovery was a "question exclusively for the decision of the Courts of "Maryland. Harper on the next day suggested to the "Court that he understood the opinion to be that the "Court had no jurisdiction to revise the decision of the "state courts in cases where the construction of a treaty "was drawn in question incidentally, and where the "party himself did not claim title under a treaty, and "was about to make some further observations when "Chief Justice Marshall said, that Mr. Harper had mis- "understood the opinion of the Court in that respect. It "was not that this Court had not jurisdiction if the "treaty were drawn in question incidentally. The reason "for inserting that clause in the constitution was that "all persons who have real claims under a treaty should "have their cases decided by the National tribunals. "It was to avoid the apprehension as well as the dan- "ger of state prejudices. The words of the constitu- "tion are, 'cases arising under treaties.'

"Each treaty stipulates something respecting the "citizens of the two nations and gives them rights. "Whenever a right grows out of *or is protected by a*

"*treaty,* it is sanctioned againts all the laws and judicial "decisions of the states, and whoever may have this "right, it is to be protected. But if the person's title is "not affected by the treaty, if he claims nothing under "a treaty ,this title cannot be protected by the treaty. "*If Scarth or his heirs had claimed, it would have been "a case arising under a treaty.* But neither the title of "Scarth nor of any person claiming under him can be "affected by the decision of this cause."

The whole scope of the decision was, that as there was no party to that suit claiming under Scarth, no stranger to the title of Scarth could invoke the treaty's protection of that title. But the case is a direct authority for the proposition that the right need not be given by the treaty, but it is sufficient to have been a right already existing and to be protected under the treaty.

New Orleans v. De Armas, 9th Peters, 223, is one of the cases upon which the learned Judge of the Court below did in some measure rely, but it is submitted that the case is in favor of the contention here made by the plaintiff. In that case the Court said:

"The merits of the controversy cannot be revised "in this tribunal. We can inquire only whether the "record shows that the constitution, or a treaty, or a "law of the United States has been violated by the de- "cision of the state court.

"The appellees moved to dismiss the writ of error "because no such violation appears. In support of his "motion, the counsel, as we think in his argument, pre- "scribed too narrow a principle for the action of this "court. He says, very truly, that the 25th section of

"the Judicial Act is limited by the constitution and "must be construed so as to be confined within those "limits, but he adds that a case can arise under a consti- "tution or a treaty only when the right is created by the "constitution or by a treaty. We think differently. "This construction would defeat the obvious purpose of "the constitution as well as of the act of Congress. "The language of both instruments extends the juris- "diction of this court to rights protected by the consti- "tution, treaties or laws of the United States, from "whatever source those rights may spring. To sustain "the jurisdiction of the court in the case now under "consideration, it must be shown that the title set up "by the City of New Orleans is protected by the treaty "ceding Louisiana to the United States or by some act "of Congress applicable to that title. The counsel in "support of the motion contends, and we think cor- "rectly, that the treaty does not embrace the case." But then it is immediately shown why it does not embrace it, and it is because the very treaty stipulation was that the inhabitants of the ceded territory should be incorporated in the Union of the United States, and admitted as soon as possible according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages and immunities of citizens of the United States, *and in the meantime they shall be* maintained and protected in the free enjoyment of their liberty, property and the religion which they profess.

"This article," said the Court, "obviously contem- "plates two objects; one that Louisiana shall be ad- "mitted into the Union as soon as possible upon an "equal footing with the other states, and the other,

"that till such admission the inhabitants of the ceded "territory should be protected in the free enjoyment of "their liberty, property and religion."

But, now, in the meantime, Louisiana had been admitted to the Union, and its inhabitants to the enjoyment of all the rights, advantages and immunities of citizens of the United States; and said the Court: "Had any one of these rights been violated while this "stipulation continued in force, the individual supposing himself to be injured might have brought his case "into this court under the 25th section of the Judicial "Act, but this stipulation would not operate when "Louisiana became a member of the Union, and its inhabitants were admitted to the enjoyment of all "the rights, advantages and immunities of citizens of "the United States."

The Court then remarked: "That it was not one of "the immunities of the inhabitants of states generally "to have their titles to real property determined in Federal courts, and that as the treaty stipulation had "come to an end, there was no obligation upon the "United States to protect those rights through its own "tribunals, and there was a distinct declaration that if "there had been such a violation while the treaty stipulation was in force, the Federal courts would have had "jurisdiction."

But now the treaty stipulation with Mexico was not limited in point of time, and it has not ceased to operate.

It is submitted that these cases clearly establish the following points:

(a) It is not necessary that the right claimed

should be one given by a treaty. It is sufficient that it is a right to be protected by the treaty, in which case it does involve the construction of the treaty.

(b) The Federal courts in protecting these rights in accordance with the treaty stipulation not only have but must necessarily exercise the power of making inquiry as to whether the right itself exists.

(c) To determine this question it looks to the laws of the country under which those rights were created or arose and determines for itself, uninfluenced by the decisions of the state court, whether the right did exist.

(d) It makes no difference, for the purposes of the jurisdiction of the court, that the first step, viz: inquiring into the existence of the right may be the more difficult, nor indeed that when that is determined the treaty protection is obvious; nor will it defeat the jurisdiction, that the parties should agree, the one that if the right did exist it was protected by the treaty, and the other, if it did not exist when the treaty was made, that it was not protected by it.

The cases, however, which had the greatest influence upon the mind of the learned Judge of the Court below, and in fact which controlled the decision in this case were Phillips v. The Mound City Land and Water Association, 124 U. S. 605-612, and the California Powder Works v. Davis, 151 U. S. 389-391. (See Transcript on Appeal, pp. 58-59.)

Phillips v. The Mound City Association was a suit for a partition of two adjacent tracts of land in the County of Los Angeles, known as the San Jose and San Jose Addition Ranchos. They were both Mexican grants and had been granted in 1837 by the Mexi-

can government to Ygnacio Palomares and Ricardo Vejar, and afterwards one Luis Arenas had acquired a third interest in the two ranchoes, and then had conveyed this title to Henry Dalton.

The grants were confirmed, first by the Land Commissioners, who had confirmed the title of each to the particular allotment made to him under what was claimed to be a previous partition of the ranchos. The United States District Court, however, confirmed the grants of the two ranchos to the parties then owning the same, as tenants in common, and the patent from the United States issued to them as tenants in common.

In opposition to the suit for partition, the defendants pleaded that there had been a former partition under the Mexican regime and possession taken under it, and that the two ranchos were no longer held in common, but each was the owner of the allotment made to him, in severalty. The Superior Court of the County of Los Angeles found against this alleged partition, and that judgment was affirmed by the Supreme Court of California, and the case was taken to this court by writ of error to the state court. A motion was made to dismiss, and it was granted.

It is admitted that some of the remarks made in the opinion seemed to be against our contention, but the decision itself upon the facts of the case is not against us.

It is said in one place that:

"Article VIII of the treaty protected all existing "property rights within the limits of the ceded terri- "tory, but it neither created the rights nor defined them.

"Their existence was not made to depend on the con-
"stitution, laws or treaties of the United States.
"There was nothing done but to provide that if they
"had in fact existed under Mexican law or by reason
"of the action of Mexican authorities, they should be
"protected. Neither was any provision made as to the
"way of determining their existence. All that was left
"by implication to the ordinary judicial tribunals.
"Any court, whether state or national, having jurisdic-
"tion of the parties and of the subject-matter of the
"action, was free to act in the premises."

124 U. S. 610.

All this may be conceded without in any manner affecting the question here. It is not denied that a state court having jurisdiction over the parties and subject matter of the action may pass upon all these questions. The real question is, when the court of last resort has passed upon it and the decision is against the right claimed, whether the United States Supreme Court has not the appellate jurisdiction, or if the suit be brought originally in the Circuit Court of the United States, the question is, would that court have the jurisdiction, as being one of those ordinary tribunals, to which the party may apply for redress.

The treaties which were under consideration in the cases which we have cited were not different from this Mexican treaty in the particulars here mentioned. The rights which were there claimed were not created by the treaty, and it was distinctly held that they need not be. It was sufficient that they were entitled to protection under the treaty. Neither did the treaties in any of those cases define those rights of property which

it meant to protect under the Mexican treaty. But in Phillips vs. Mound City Association the Court also said, after stating the facts:

"The single question presented to the Court below "for determination was whether there had *in fact* been "such a partition. To establish this fact, proof was "made of what had been done by and before the Mexi- "can tribunal in that behalf, and the Court held that "it was insufficient. In so doing it decided no ques- "tion of Federal law, but only that the legal effect of "what had been done was not such as was required to "bind the parties by the partition. In this particular "the case stands precisely as if instead of a partition "under the form of a judicial proceeding, one had been "made by the voluntary conveyances of the parties after "the original grants and before the treaty. Had the ef- "fort been in this case to establish such a partition in- "stead of one through judicial action, we can hardly "believe it would be claimed that a Federal question "was presented by a decision that the conveyances "which were put in evidence did not furnish the neces- "sary proof. Yet that is substantially this case."

124 U. S. 611.

Now if a partition by deed or by parol acted upon had been relied upon, and it had been denied that any such partition had been made, and the Court had found as a matter of fact that it had not been, we do not doubt that under the well settled principles, the Federal court would have had no jurisdiction, and the case, in the passages here quoted, seemed to turn upon the proposition that whether that partition was made or not was a question of fact submitted to the court, and that the court decided against it.

But if the facts themselves were agreed upon, and it was claimed by one party that they did, under the laws of Mexico, constitute such a partition, and by the other, that they did not, it would seem to be a very simple way of disposing of all rights which the United States guaranteed by the treaty to protect, if the state court can avoid the Federal jurisdiction by simply declaring that the right was not such as was recognized by Mexican law.

California Powder Works v. Davis, 151 U. S. 389, we think is entirely disposed of as an authority upon the question here presented by the facts upon which it turns. That controversy arose upon two conflicting patents for land issued upon confirmed Mexican grants. It was held that the confirmation of the claims of these respective parties might be conclusive against the United States and those claiming under them, though such confirmation and patent had no effect upon the interests of third parties. (151 U. S. 394.) And in that case, the question was upon the genuineness of one of those grants, and the state court held that the decree of confirmation of the Land Commissioners of the grant to Bocle had been procured by fraud—that in fact no such grant had been made, and the paper purporting to be such grant was false, simulated and fabricated, and made after the conquest of California by the United States from the republic of Mexico in or about the year 1848, and was fraudulently imposed upon said Board of Land Commissioners as valid and genuine.

The Supreme Court of the United States held that this was a decision upon a question of fact, and that

the court had no jurisdiction.

The present controversy is of no such character. It involves: *First,*

The determination of the question as to what rights under Mexican law and by virtue of the grants of the Ranchos Los Felis and San Rafeal by the Mexican and Spanish governments in the waters of the Los Angeles river and in the waters percolating in the soil passed to the grantees, as incidental to the ownership of the land, or rather as to what rights in the said waters, both the surface and subterranean, were included in the grants, as part and parcel of them.

That it is the duty of the United States courts to look into these laws for the purpose of determining what rights accrued to the grantees under them, is, we think, determined by the cases cited, and furthermore, those laws are not foreign laws, but are part of the laws of the United States for the purpose of performing the obligations incurred by that government under the treaty, and the federal courts are bound to take judicial notice of them as much so as the laws of the states of the Union.

U. S. v. Chaves, 159 U. S. 452, and the cases cited.

U. S. v. Kingsley, 12 Peters 476.

*Second.* What rights therein passed to the United States government from Mexico and from the United States to the patentees.

No controversy is made about the existence of the grant, or at least none is disclosed in this proceeding, as far as it has gone, and it is respectfully submitted

that the suit is one arising under and involving the construction of the treaty.

## 2. The suit arises under the laws of the United States.

The Congress of the United States has at divers times asserted or assumed that the United States Government as to the public lands is vested with all of the rights of a riparian proprietor in the innavigable streams flowing through those lands.

By the Mining Act of 1866, 14 Statutes 253, Congress declared that:

"Whenever by priority of possession, rights to the "use of water for mining, agricultural, manufacturing "or other purposes, have vested and accrued * * * "the possessors and owners of such vested rights shall "be maintained and protected in the same."

Revised Statutes, Sec. 2339.

By the Desert Land Act, so called, the right to the use of water for the reclamation of desert lands, in accordance with the provisions of the act approved March 3, 1887, is made to depend upon bona fide appropriations. It was provided that such rights should not exceed the amount of water actualy appropriated, and necessarily used for the purpose of irrigation and reclamation, and all surplus water over and above such actual appropriation and use, together with the water of lakes, rivers and other sources of water supply upon the public lands, and not navigable, should remain and be held free for the appropriation and use of the public for irrigation, mining and manufacturing purposes, subject to existing rights.

19 Statutes 377.

Since the passage of the act of 1866, and under the Revised Statutes, Sections 2339 and 2340, the Supreme Court of California has held that one who makes an appropriation of water upon the public lands, and acquires a right, by that act recognized and confirmed, holds the waters by an express grant from the United States.

Smith v. Hawkins, 110 Cal. 122, 125.

It had been long ago held that:

"The Government of the United States has an abso-"lute and perfect title to its lands. * * * Unless, "therefore, running waters are reserved, they pass by "grant or patent of the United States. It was so held "in Vansickle v. Haines, 7. Nev. 259. * * *

"Whatever may be the weight of authority of Van-"sickle v. Haines in other respects, the statement that "the grantee or patentee acquires from the United "States—the absolute and unqualified owner of the pub-"lic lands—common law rights in waters flowing "through the lands granted (except where the waters "or a portion of them are reserved) has never been dis-"puted."

Laux v. Haggin, 69 Cal. 340.

See the cases also referred to of

Vansickle v. Haines, 7 Nev. 259.

Union M. & M. Co. v. Ferres *et al.*, 2nd Sawyer 176.

Sturr v. Beck, 133 U. S. 541.

Now the rights which the United States acquired to the lands within the ceded territory, and the effect of its patents upon confirmed Mexican grants have been

considered so often that it is scarce worth while to refer to authorities to prove that the United States succeeded to all the rights of the Mexican Government to the public lands, its proprietary rights as well as its sovereign dominion over them; that if the Mexican grant was not perfect and complete, whatever right, title or interest remained in the Republic of Mexico passed to the United States—that it took this title charged with the duty of protecting and upholding all rights and interests which had vested under the former government; that the patent of the United States, when it comes, has a two-fold aspect, in one of which it operates as a deed of quit-claim on the part of the United States, and in the second place is a record of the action of the Government upon the title of the claimant as it existed upon the acquisition of the country, are all principles well settled, and all of them may be found decided with numerous authorities cited, in

Knight v. United States Land Association, 142 U. S. 161, 183, 188.

Hence, whatever title may have yet remained in the Mexican Government in the Ranchos Los Felis and San Rafael passed to the United States by the cession of the territories in which they are embraced. Hence, we say that whether the Mexican laws concerning the rights of owners of lands under Mexican grants were the same as the laws of the United States or not, or whether their laws respecting the ownership of the waters percolating in the soil, by the owners of the soil, were or were not the same, yet as the entire title to these lands, both of the Mexican Government, and that of the United States passed to the grantees by virtue of

the Mexican grants and the United States patents, then —unless there was some previous right granted to other parties (in this instance the Pueblo of Los Angeles, if there was any such thing)—then we say that by virtue of the United States patent, and under the legal rights of the United States in that land at the time of the issuance of the patent, the patentees became vested with the title to the percolating waters, as well as to the rights of riparian owners in the waters of the stream.

Now, that being the case, long after the grants were made, and after the acquisition of California, the Legislature of the State of California, did pass an act on March 26th, 1874, the first section of the second article of which is as follows:

"That there be and hereby is granted to said cor-"poration to be by it held, used and enjoyed in absolute "ownership, the full, free and exclusive right to all of "the water flowing in the River Los Angeles at any "point from its source or sources to the intersection of "said river with the southern boundary of said city; "also the right to develop, economize, use and utilize "all waters flowing beneath the surface in the bed of "said river at any point or points between the point of "terminii above given; and for that purpose, it is here-"by declared that the powers to condemn property out-"side of the limits of said city, given by the provisions "of Sec. 2, Art. II of this Act, in so far as the same "relate to the condemnation of property and water for "increasing the water supply of said city, are intended "to be given and to be restricted to such sources of sup-"ply and to the rights therein, excepting and reserving

"from the operation of the aforesaid grant of the water "flowing in said river, unless the same be condemned "and taken for public use as herein provided, all vested "private rights to the water flowing upon the surface "or beneath it, in the bed of said river; and provided "that the said corporation shall not in any manner dis- "pose of, transfer, or convey any portion of said water "or any right to develop or use the same or any portion "thereof to any corporation, association, individual or "other person who might or would use the same in any "way prejudicial to the use thereof for irrigation with- "in the limits of said city, or who might or who would "at any time, for any good or valuable consideration, "desire to sell or in any way dispose of it to any other "person, natural or artificial, any interest therein, or "right to the use thereof;

"And provided further, that the zanjas which are with- "in the limits of said city known as the principal zanja "and zanjas Numbers 1, 2, 3, 4, 5, 6, 7 and 8, are here- "by declared public zanjas; and the quantity of water "which has heretofore generally flowed in each one of "said zanjas is hereby declared to be the quantity "which, by right, belongs to each one of said zanjas, "and to the farmers and fruit growers who are bene- "fited by their use."

Statutes of 1873-4, p. 633, Art. II, Sec. 1.

We have quoted only so much of said section as bears upon this particular question.

In 1878, the charter of the City was again amended by the Legislature, and the first section of the second article is as follows:

"There is hereby granted to said corporation, to be

"by it held and enjoyed in absolute ownership, the full, "free and exclusive right to all the water flowing in the "River Los Angeles, at any point from its source or "sources to the intersection of said river with the south- "ern boundary of said city; also the right to develop, "economize, use and utilize all the waters flowing be- "neath the surface in the bed of said river, at any point " or points between the points of terminii above given, "and for that purpose, it is hereby declared that the "powers to condemn property outside of the limits of "said city given by the provisions of Sec. 2, Art. II of "this act, in so far as the same relate to the condemna- "tion of the property and water for increasing the "water supply of said city, are intended to be given "and to be restricted to such sources of supply and to "the rights therein;

"And provided that said corporation shall not in "any manner dispose of, transfer or convey any por- "tion of said water, or any right to develop or use the "same or any portion thereof, to any person, associa- "tion, individual, or other person, who might or would "use the same in any way prejudicial to the use thereof "for irrigation, domestic and culinary purposes within "the limits of said city, or who might or would at any "time, for any good or valuable consideration, desire "to sell or in any way dispose of, to any person, natural "or artificial, any interest therein, or right to the use "thereof;

"And provided, further, that the said corporation, "by ordinance duly enacted by its Council, as hereinaf- "ter provided, shall have the power:

"*First.* To declare and make all zanjas now exist-

"ing or hereafter constructed within the limits of said "city, public zanjas.

"*Second.* To fix, regulate and control the amount "and disposition of the water which shall run and be "contained in and conveyed by each and every one of "said zanjas.

"*Third.* To make and enforce all rules and regula- "tions necessary to maintain and protect said zanjas, "and the waters flowing therein, and to prevent the de- "filement or pollution of said waters by the flowing "into the said zanjas of any filth or matter detrimental "to the public health, or by the discharging therein of "the contents of any drain, sewer or sink, or in any "other manner whatsoever; to provide for the prosecu- "tion and punishment, in the proper courts, of all per- "sons offending against said rules and regulations."

Statutes 1877-78, p. 643, Art. II, Sec. 1.

By the constitution adopted in 1879, and the several amendments thereto, it was provided that cities having a certain number of inhabitants, and which included Los Angeles City, might frame a charter for their own government, consistent with and subject to the constitution and laws of the State, by causing a Board of Freeholders to be elected, who should propose the charter, and if adopted by the electors of the city, it should be submitted to the Legislature for its approval or rejection, as a whole, and when ratified by the Legislature, and certain other procedure taken, it became the charter of the city.

Const. 1879, Art. IX, Sec. 8.

Under this provision, the City of Los Angeles adopted a charter in 1888, which was submitted to the

Legislature of the state in 1889, and by the Legislature ratified, and in Art. XVIII of that charter, Sec. 190, it is declared that:

"The City of Los Angeles shall continue in the own-"ership and enjoyment of all rights to the waters of the "River of Los Angeles heretofore vested in its prede-"cessor or predecessors, including the Pueblo of Los "Angeles, and is hereby declared to have the full, free "and exclusive right to all the waters flowing in the "said river at any point from its source or sources to "the intersection of said river with the southern "boundary of said city, and also the ownership of and "the right to develop, economize, control, use and util-"ize all water flowing beneath the surface in the bed of "said river, at any point or points between the points of "terminii above named."

Sec. 190, Art. XVIII, Statutes of 1889, pp. 502 and 503.

"Section 191. The said city shall not convey, lease "or otherwise dispose of its right in said waters or any "part thereof or grant or lease to any corporation or "person, any right or privilege to use, manage or con-"trol said waters, or any part thereof, for any purpose, "public or private, otherwise than by license revokable "by said city at pleasure upon notice not to exceed six "months; provided, that this provision shall not be con-"strued to prevent the ordinary sale and distribution "of the said waters to the inhabitants of the city, or per-"sons doing business therein, for irrigating and domes-"tic uses, and for manufacturing purposes other than "for water power."

"Section 192. The said corporation shall have the

"right and power to construct, maintain, and operate "water works, dams, reservoirs, ditches, canals, and "other means to conduct the said waters from said riv- "er at all points between the said terminii, and to sup- "ply the city and its inhabitants with water, and to dis- "tribute such water through any zanjas, pipes or other- "wise, into, upon and over the lands within the limits "of said city, which water mains by whomsoever here- "after laid in said city shall be of such material and "such capacity as shall be prescribed by ordinance; pro- "vided that no such mains shall hereafter be laid in said "city of less dimension than four inches in diameter."

Section 193 relates to the rates of compensation for the use of the water and is not material here.

This last statute is not specially set forth in the bill, but it is submitted that this court takes judicial notice of the laws of the State of California, including the charters of cities, at least when they are public laws, and that it is not necessary to specially plead them. It is sufficient if, from the facts alleged in the bill, the Federal question does arise as a matter of law, where those laws are such as this court takes judicial notice of.

All courts take notice of the constitution of the United States and the laws of the State where they are exercising their functions without the same being pleaded.

Sherman v. Nichols, 8 Wall. 44;
Marbury v. Madison, 1 Cranch 137;
Hinde v. Battier, 5 Peters 398;
Priestman v. U. S., 4 Dallas 28.
Lemar v. Micou, 114 U. S. 218.

And where countries have been acquired by the United States, the laws of such countries are not foreign laws, and the United States Courts will take judicial notice of those laws which prevailed up to the time of the acquisition.

U. S. vs. Perot, 98 U. S. 28.

U. S. vs. Turner, 11 How. 663.

Courts take judicial notice of a municipal charter when declared by the Legislature to be a public act.

Case v. Kelly, 133 U. S. 21.

See further 4th Nat'l Bank of N. Y. v. Francklyn, 120 U. S. 747.

And the Courts of California take notice of the fact that a city or town is incorporated, without proof and without averment.

City of Pasadena v. Stimson, 91 Cal. 238, 256.

The United States Courts will take judicial notice of the authority of a municipal corporation to borrow money under a supplement to its charter.

Anfey v. Donoghue, 116 U. S. 1;

Renaud v. Abbott, *Id.* 277.

Now the constitutional prohibition againts passing laws impairing the obligation of contracts applies as well to executed as to executory contracts.

Sedgwick on Constitutional and Statutory Law, p. 587 *et seq.*

Fletcher v. Peck, 6 Cranch 133.

Hawkins v. Barney's Lessee, 5 Peters, 457;

Cooley's Constitutional Limitations p. 273-274, also page 285.

Tucker on Constitution, Vol. II, pp. 827-829 and 838 and authorities cited.

Now if under the patent from the United States, the

grantors of the plaintiff acquired the rights which we claim, that these statutes impaired the obligation of the contract is too obvious to require argument or citation of authorities; and it is just as obvious that those statutes deprive the plaintiff of its property without due process of law, or at least attempt to do so, as it is that they are in violation of those contract rights.

To avoid the jurisdiction of the Court for the matters alleged with respect to these statutes, there are several different suggestions made by the learned counsel for the defendant, not all of which, however, were concurred in by the learned Judge of the Court below. Among them are the following:

(a) The plaintiff has no such rights, either under the laws of Mexico or through the patent of the United States, as are claimed. The claim of the City of Los Angeles to these waters, both of the river and of the waters percolating in the soil, is valid and arises out of some supposed paramount right which accrued to a Mexican or Spanish pueblo by virtue simply of its being such.

But this, it is submitted, is no answer at all; for before this can be accepted by the Court, there must be the examination and the decision of the Court that that is correct; but that is the exercise of jurisdiction, and the very jurisdiction which we are here invoking.

In Hamilton Gaslight Co. v. City of Hamilton, 146 U. S. 258, and Shively v. Bowlby, 152 U. S. 1, and many other cases, the Court has sustained the jurisdiction while nevertheless deciding the case against the plaintiff. Thus, in the Hamilton Gaslight case, it was claimed there that the law impaired the obligation of

the contract. This Court said there was no doubt of the jurisdiction, but the decision finally was that it did not impair the obligation of the contract.

(b) It is also claimed that the particular clauses of the constitution claimed to have been violated should be set forth in the bill; but this is not necessary.

Hanford v. Davies, 163 U. S. 273.

Meyers v. Hettinger, 94 Fed. 370.

Gordon v. Bank, 144 U. S. 97.

Express Co. v. Kountze, 8 Wall. 342.

Jones v. Andrews, 10 Wall. 327, 331.

(c) It is claimed that the rights acquired in the waters of the stream (including the underground waters which as alleged in the bill, are claimed to constitute a part of the Los Angeles river) either under the Mexican or Spanish grants or the United States patents are questions merely of state law; and to support this, it is said that the states have the exclusive power to determine the rights of riparian owners.

Even if this were true, it would be no answer here, for the rights vested by those grants and by the United States patents were long anterior to the acts of the Legislature of which we complain, and it had been decided repeatedly by the Supreme Court of the State of California, that the owner of lands through which a non-navigable stream flows has the rights of a riparian proprietor as those rights were established at common law, modified only to a very limited extent by the condition existing in this country, and that the United States holds the public lands as any other proprietor, and with all the common law rights of a riparian owner, and that a grant of the public lands of the United States carries with it those rights unless the waters are

expressly or impliedly reserved by the terms of the patent, etc.

Lux v. Haggin, 69 Cal., 255, 336, *et seq.*

Hence, those rights having once vested, could not be divested by any subsequent legislation by the state, no matter what her powers over them might have been before the acquisition of the title. But then this Court has never held that the states have any such power over the property of the United States. The case principally relied upon by our adversaries is Eldridge v. Trezevant, 160 U. S. 452. It is no authority for any such a proposition. The question there was, as to the rights of riparian owners to the shores of navigable streams.

The lands there bordered upon the Mississippi river, and one of the authorities cited for the decision was Barney v. Keokuk, 94 U. S. 324-327. In that case the Court said:

"It is generally conceded that the riparian title at-
"taches to subsequent accretions to the land affected by
"the gradual and imperceptible operation of natural
"causes. But whether it attaches to land reclaimed by
"artificial means from the bed of the river or to sud-
"den accretions produced by unusual floods, is a ques-
"tion which each State decides for itself."

The Court then remarked upon the confusion of navigable with tide water, found in the monuments of common law and which had long prevailed in this country, and for two generations had excluded the admiralty jurisdiction of the federal courts from the great rivers and inland seas of the United States, and that it had led to the foundation in many states of doctrines with re-

gard to the ownership of the soil in navigable waters above tide water, at variance with sound principles of public policy. Whether as rules of property, it would be safe to change these doctrines where they have been applied, was for the several states themselves to determine. If they chose to resign to the riparian proprietor rights which properly belonged to them *in their sovereign capacity*, it is not for others to raise objections.

The entire passage isquoted in the Trezevant case,and it is obvious that they are treating of navigable waters, and not innavigable streams.

No one pretends that the River of Los Angeles, or any other non-navigable stream in the State of California does now or ever did belong to the state in her sovereign capacity.

Another case cited in Trezevant's case is Packer v. Bird, 137 U. S. 661. In that case, at page 669, Justice Field, delivering the opinion of the Court, said:

"The Courts of the United States will construe the "grants of the general government without reference to "the rules of construction adopted by the states for "their grants; but whatever incidents or rights attach "to the ownership of property conveyed by the govern- "ment will be determined by the states subject to the "condition that their rules do not impair the efficacy of "the grants or the use and enjoyment of the property "by the grantee. An incident of such ownership, the "right of the riparian owner, where the waters are "above the influence of the tide, will be limited accord- "ing to the law of the state, either to low or high water "mark, or to extend to the middle of the stream."

But here again the Court was speaking of navigable waters.

Hardin v. Jordan, 140 U. S. 371, is another of the same kind, where it is said with regard to grants of the government for land bordering on tide water:

"It has been distinctly settled that they only extend "to high water mark, and that the title to the shore "and lands under water in front of lands so granted, "enures to the state within which they are situated, if a "state has been organized and established there. Such "title to the shore and lands and under water is re- "garded as incidental to the sovereignty of the state—a "portion of the royalties belonging thereto and held in "trust for the public purposes of navigation and fishery "—and cannot be retained by or granted out to individ- "uals by the United States. * * * Such title be- "ing in the state, the lands are subject to state regula- "tion and control under the condition, however, of not "interfering with the regulations which may be made "by congress with regard to public navigation and "commerce."

*Id.* 381-2.

"This right of the states to regulate and control the "shores of tide waters, and the land under them, is the "same as that which is exercised by the Crown in Eng- "land. In this country the same rule has been ex- "tended to our great navigable lakes, which are treated "as inland seas; and also, in some of the states, to nav- "igable rivers, as the Mississippi, the Missouri, the "Ohio, and in Pennsylvania, to all the permanent riv- "ers of the state; but it depends on the law of each state "to what waters and to what extent this prerogative of

"the state over the lands under the water, shall be ex-
"ercised."

Shively v. Bowlby, 152 U. S. 1, was another of the same kind. The lands in all of these cases were bordering on navigable waters. The controversy was always concerning the title to lands below high water mark, some of the parties claiming under the state, some under United States patents. The ground upon which they were all proceeding was that the state owned the tide lands, or the lands between high and low water mark, of navigable waters, and had the power to dispose of them. If, therefore, the state chooses to declare that the deeds or patents of the United States or any other instrument conveying lands bordering on navigable waters shall be deemed to extend to the middle of the stream or to low water mark, it is perfectly competent for it to do so, and this is all that is decided in any of them.

In the case of Knight v. the Land Association, *supra*, the controversy was of the same kind, but the Court determined that there had been a grant of these tide lands that were in dispute, before the existence of the State of California, and hence, that the state never became the owner of those lands, and the title claimed under the City of San Francisco was good.

Trezevant's case may have carried the doctrine a little further, as it related to building levees on the banks of the river, and a little way from the bank proper. But this arose from the character of the river, and the necessity of such works to protect the country from inundation. And this power as part of the sovereign control over the shores had been asserted and exercised under the former government, and all lands granted

along the shores of the Mississippi had from time immemorial been held to be subject to the servitude, and subject to be occupied by the public for the purpose of building and maintaining levees; but that no new principle was introduced by this case is fully shown by the authorities cited in its support.

It would be strange if any such power did exist in the states. It has been frequently decided, and by the Supreme Court of California, and it is the common law, that the riparian owner's right to have the water flow as it is accustomed to flow, is neither an easement nor an appurtenance, but is a part and parcel of the soil, as much so as the trees that grow upon it, or the rocks that are imbedded in it. It was so decided in Lux v. Haggin, and has been so decided many times since.

Now the act of admission of California into the Union forbids it to do any act that will interfere with the disposition of the public lands of the United States. If the state had the power to declare what rights one should have to the use of the waters of non-navigable streams flowing through the public lands, why would it not equally have the power to strip the title of the United States of all the incidents of ownership, and deny the grantee of the United States any use of the property whatever. It is submitted that it is not a matter of state prescription.

(d) The further argument was made in the court below that if the statutes did impair the obligation of a contract or deprive the plaintiff of its property without due process of law, why, of course, they were void, and that the city made no controversy with the plain-

tiff about this. The force of this argument is not very apparent. If the argument were valid, it would seem necessarily to result that the jurisdiction of the Federal Court would never exist, upon the ground that the obligation of a contract was impaired, or one is divested of his property without due process of law, except where its jurisdiction would be useless. For, if the statute did deprive one of his property, or impair the obligation of a contract, the Federal Courts could afford noprotection against it. If it did not the Court would have no jurisdiction.

(e) The claim, however, which was sustained by the Circuit Court, and the ground upon which this bill was dismissed, was that the answer constituted such a disclaimer as to defeat the jurisdiction, in so far as it rested upon the constitutional provision against impairing the obligation of contracts and divesting property rights. The learned Judge of the Court below was of the opinion that the other grounds of jurisdiction claimed were insufficient. Now the supposed disclaimer is contained from Fol. 52, page 29, to Fol. 56, page 31 of the transcript. The answer admits; "that "the defendant does claim as the successor of the Mex- "ican Pueblo of Los Angeles, and by virtue of the laws "of Mexico governing and regulating and fixing the "rights of pueblos to the waters of streams flowing "through said public lands, and by the said several acts "of the Legislature mentioned in said bill purporting to "grant to said City of Los Angeles the sole and ex- "clusive right to the waters of the said river; that this "defendant is the sole and exclusive owner of all of the "waters flowing in said Los Angeles river from its

"sources to the southern boundary of said city, and of "the sole and exclusive right to develop waters perco- "lating under the bed of said river or elsewhere which "flow into and become a part of the waters of the said "Los Angeles river; but this defendant denies that said "sources of title are the only sources of title of this de- "fendant's said rights, but, on the contrary, alleges that "it also claims the said rights under the laws of Spain "governing, regulating and fixing the right of pueblos "to the waters of streams flowing through such pueblos "or used by such pueblos, and under various grants to "its predecessor, the said Pueblo of Los Angeles of the "Spanish and Mexican governments, and also by long "and continued uses and possession of said river and "the waters thereof for a period of more than one hun- "dred years, and by various grants from private indi- "viduals, and by virtue of various judgments and de- "crees of courts of competent jurisdiction, and also by "virtue of its ownership of the land through which said "river flows, in passing through said four square "leagues patented to said Mayor and Common Council "of the City of Los Angeles."

*Id.*, p. 29, Fol. 52.

Now here is a distinct assertion that it does claim under these acts of the legislature, although it claims under various other titles. To give the Federal Court jurisdiction it is not necessary that the only question involved should arise under a treaty, or constitution, or law of the United States, or that all the questions should be of that character; it is sufficient if any one of them is.

Gold Washing & Water Co. v. Keyes, 96 U. S. 203;

Osborn v. Bank of U. S., 9 Wheaton 738;
Leonard v. City of Shreveport, 28 Fed. 359;
Wilmington & Weldon R. R. Co. v. Allsbrook, 146 U. S. 293.

Passing further to this supposed disclaimer. In the next clause, commencing on page 29, the defendant, further answering, denied:

"That it claimed that the said last mentioned "acts of the legislature, or any one or more of "them, granted to the city of Los Angeles (the "predecessor of this defendant) any vested pri- "vate right, if any, in the water flowing or being "upon the surface or beneath it in the bed of "said Los Angeles river, or any water or right "whatsoever, if any, which was at the time of "the passage of said acts of the legislature, "vested in said Los Angeles City Water Com- "pany, or its predecessor in interest, or the "predecessor in interest of said Crystal Springs "Land & Water Company; but, on the contrary, "this defendant disclaims having acquired un- "der any of said acts of the legislature any "right, if any, to the water flowing upon the "surface or beneath it in the bed of said river or "any other water or right whatsoever, if any, "which was at the time of the passage of said "acts vested in said Los Angeles City Water "Company or its predecessor in interest, or in "the predecessor in interest of said Crystal "Springs Land & Water Company, or in any "private individual or corporation; and this de- "fendant denies that it claims, or ever claimed, "under or by virtue of said acts of the legisla- "ture, or any of them, the right to develop

"waters percolating in the bed of said river or "elsewhere, without having first obtained the "right of entering upon the land, to so develop, "from the owner of the soil where such devel- "velopment should be made, either by grant "from such owner or by condemnation of such "right, and in making compensation to said "owner therefor or otherwise.

"And further answering, the defendant denied "that it claimed, or ever claimed, that there was "granted by said acts of the legislature, or any "of them, to the city of Los Angeles * * * "any right, if any, to develop waters percolating "under the bed of said Los Angeles river or "elsewhere, which was at the time of the pas- "sage of said acts vested in any private indi- "vidual or corporation, or in said Los Angeles "City Water Company or its predecessors in "interest, or in the predecessor in interest of the "said Crystal Springs Land & Water Company; "and this defendant disclaims that said acts of "the legislature, or any one or more of them, "had the effect of granting to this defendant "any right, if any, to develop water percolating "in the bed of said Los Angeles river, or else- "where, which was at the time of the passage of "said acts vested in any private person or cor- "poration or in said Los Angeles City Water "Company, or its predecessor in interest, of said "Crystal Springs Land & Water Company."

The defendant admitted that it claimed that the excavations alleged in the bill of complaint,

were made without right, and that the water belonged to it, etc.

*Id.* pp. 29–31.

This, it is respectfully submitted, is no disclaimer at all. It distinctly claims under the statute and what the disclaimer really amounts to is a denial of the plaintiff's rights or the right of its predecessor. Now, to determine that question is, we say again, the exercise of jurisdiction, and not a ground for dismissing for want of it

The supposed authority for this dismissal is Robinson v. Anderson, 121 U. S. 522. The syllabus of that case is:

"When after all the pleadings are filed in a "cause in the "Circuit Court of the United "States, between citizens of the same state, it "appears that the averments in the declaration "which alone give the court jurisdiction, are im "material in the determination of the matter in "dispute, and are made for the purpose of creating "a case cognizable by the court, it is the duty "of the Circuit Judge to dismiss the bill for want "of jurisdiction."

Certainly there is nothing in this case that brings it within the syllabus of that case. Some of the defendants in that case answered denying that they were in possession of any portion of the premises in dispute. Others claimed that they were in possession by and with the consent of the plaintiff made and given to defendants by plaintiff's agent, and not otherwise. Others claimed to be in possession in severalty under and by virtue of written contracts, for the con-

veyance of said several tracts of land * * * by the plaintiff to the defendants. The action was ejectment. It was based upon a supposed conflict in the boundaries of two different ranchos, but when the answers were all in, the defendants were either not in possession at all or were there claiming under the plaintiff and not otherwise, and were not claiming under the Rancho Santiago de Santa Ana at all. The two cases are not parallel.

In Illinois v. Ill. Ry. Co., 33 Fed. 721, in which the Attorney-General of Illinois undertook to disclaim for the state any claim under a certain act of the legislature of that state, of April 15, 1873, Mr. Justice Harlan, delivering the opinion of the court, says:

"But it is contended that the case should be " remanded because it appears from the paper " filed by the Attorney-General of Illinois that " he disclaims reliance for any purpose whatever " in this proceeding upon the repealing act.

"It is quite sufficient upon this point to say " that the court is bound to take judicial notice " of that statute, and must give effect to it un- " less at the hearing it be adjudged to be uncon- " stitutional and void. The disclaimer of the " Attorney-General cannot work a repeal of the " act of 1873 nor close the eye of the court to the " fact that the state—if it could be constitution- " ally done—has repealed the act of 1869. As " the railroad bases its claim to own the lands " in question, and its authority to construct and " maintain wharves, docks and piers in connec- " tion with them upon the act of 1869, the court,

" notwithstanding this disclaimer, could not re-
" fuse to adjudge—if such should be its opinion
" —that the right of the company to claim any-
" thing under that statute, in respect to those
" lands, had been legally withdrawn by the re-
" pealing act. Even if the Attorney-General
" had stipulated with the Company that he
" would not, in this proceeding, claim anything
" for the state under the latter act, the court
" would feel obliged to disregard such stipula-
" tion.

"Whether the repealing act had such effect is
" a question which the company proposes to
" raise at the proper time and in proper form for
" judicial determination. Upon that claim de-
" pends the result of this litigation. The pres-
" ence in the cause of such an issue makes this
" a case arising under the constitution of the
" United States."

It is submitted that all this applies with much greater force in the present case. Not only could not the nttorneys for the city repeal the acts, but as already shown by the provisions of the charter, the city itself, acting in any way, was prohibited from disposing of the waters of the river or any of its rights therein. Now if it could not do this directly, neither could it do it by the indirection of a disclaimer. Besides, it can only be in rare and exceptional cases that anything can oust the jurisdiction of the Federal Court when it has once attached. It has been held that the jurisdiction of these courts cannot be vested or divested by the character of the defense made, but depends upon the

issues raised by the plaintiff's petition, and necessary to be determined to afford him an adequate remedy.

Sawyer v. Parish of Concordia, 12 Fed. 754.
Wilmington & Weldon R. R. Co. v. Allsbrook, 146 U. S. 293.
Osborn v. Bank of U. S. 9th Wheaton, 738, 819, 823, 824.

See also upon this point and upon the general subject of the jurisdiction of the Court in this case.

Woodruf v. Mississippi, 162 U. S. 291.

And the Federal Courts will determine for themselves whether the suit really involves a federal question, independent of the judgment of state courts.

Newport Light Co. v. City of Newport, 151 U. S. 527, 536, 537.
See Mobile & Ohio R. v. Tennessee, 153 U. S. 486.
Vicksburg etc. R. Co. v. Dennis, 116 U. S. 667.

We have not deemed it at all pertinent to the inquiry here what may be in fact, or rather, in law, the rights of the parties growing out of these claims under Mexican grants, Pueblo establishments and United States patents, for reasons already stated, namely, that those are the very questions to be determined in any decision upon the merits of the controversy. And the fact that they may be ultimately decided either this way, or that, has nothing whatever to do with the jurisdiction, for if the court has no

jurisdiction, it cannot decide anything about it. But if any such inquiry should be entered upon here, the caseof

United States vs. Santa Fe, 165 U. S. 675, has very materially qualified the opinions which many lawyers entertained respecting the rights of Spanish pueblos, and has completely refuted some propositions which have been contended for in California; among others it decides that a Spanish pueblo does not by the mere fact of its creation or organization become entitled to four square leagues of land, nor to any land whatsoever; but its title to those lands depends upon the making of a grant to them, and that the quantity contained in such grant is not a fixed and determined quantity passing by all such grants, but is of just whatever quantity may happen to be granted to it.

In the present case the city's title does depend upon a grant made by the Mexican government, and it is more than doubtful whether there was any such thing as a Spanish pueblo here at the time the grant was made. But, whether there was or not, would never establish the slightest foundation for the extravagant claim made by the city of Los Angeles, that as a successor of the Spanish pueblo it is the absolute owner not only of all the water flowing in the water course known as the Los Angeles river, but all percolating waters which by any process does or may find its way into that river at any point from its source or sources to the south boundary of the city.

Said this court in United States vs. Santa Fe,

165 U. S. 707: "It cannot be doubted that under the law of Spain it was necessary that the proper authorities should particularly designate the land to be acquired by towns or pueblos, before a vested right or title to the use thereof could arise."

Again on page 708: "There is nothing whatever designated by law as belonging to towns, other than that which by royal privilege, custom or contract between man and man, is granted to them, so that although there be assigned to the towns at the time of their constitution a territorio and pertinencias, which may be common to all the residents, without each one having the right to use them separately, it is a prerogative reserved to the princes to divide the terminos of the provinces and towns, assigning to these the use and enjoyment, but the domain remaining in the sovereigns themselves.

Considering this subject, this court, speaking through Mr. Justice Field in Grisar vs. McDowell, 6 Wall. 363, 373, said:

"These laws provided for the assignment to the pueblos, for their use and the use of their inhabitants, of land not exceeding in extent four square leagues. Such assignment was to be made by the public authorities of the government upon the original establishment of the pueblo, or afterwards upon the petition of its officers or inhabitants; and the land was to be measured off in a square or prolonged form, according to the nature and condition of the country. All lands within the general limits stated, which had previously become private property or

were required for public purposes, were reserved and excepted from the assignment.

Until the lands were thus definitely assigned and measured off, the right or claim of the pueblo was an imperfect one. It was a right which the government might refuse to recognize at all, or might recognize in a qualified form; it might be burdened with conditions and it might be restricted to less limits than the four square leagues, which was the usual quantity assigned."

*Id.* 708–9.

The opinion furthur shows that even after a formal designation the control of the outlying lands, to which a town might have been considered entitled, was in the King, as the source and fountain of title, and could be disposed of at will by him, or by his duly authorized representative, as long as such land were not affected by individual and private rights.

It furthermore distincly appears from this opinion that this right of the Mexican government over these pueblo lands passed to the United States, and it was in the exercise of that sovereign right that congress in enacting the laws of 1864 and 1866 carved out of the claim of San Francisco such land for public purposes, as it saw fit, and authorized further reservations to be made within a period of a year, and subjected the lands to specific trusts, imposed not alone upon the municipality of San Francisco, but also upon the general assembly of California.

Again: "Even after the assignment the interest acquired by the pueblo was far from being

an indefeasible estate such as is known to our laws. The purposes to be accomplished by the creation of pueblos did not require their possession of the fee. The interest amounted to little more than a restricted and qualified right to alienate portions of the land to its inhabitants for building or cultivation, and to use the remainder for commons, for pasture lands or as a source of revenue, or for other purposes. And this limited right of disposition and use was in all particulars subject to the control of the government of the country."

*Id.* 713.

Now, no such particular assignment was ever made by the Spanish or Mexican government, nor was any grant ever made to the city until the 25th day of August, 1844.

Tr. fol. 5 p. 3.

Nor was it ever surveyed and located at all until it was done by the United States government.

No such rights as are insisted upon here are even claimed to have been created by the said Mexican grant, unless those rights attach to the mere grant of the land themselves, and an incident under the laws relating to these pueblos. And we claim that there was no such law and no such right resulting from the grant, nor can they accrue by the acts of the legislature of the state of California. However, it is unnecessary to pursue this subject, or at least so we think, for that question is not before the court, but

simply the question of whether the Circuit Court had jurisdiction of the case. And it is repectfully submitted that the court has jurisdiction on all the grounds claimed, aud that the disclaimer was insufficient to oust the court's jurisdiction, and that the judgment of the Circuit Court should be reversed.

JOHN GARBER, and
STEPHEN M. WHITE,
*Solicitors for the Appellants.*

IN THE

# SUPREME COURT

OF THE

UNITED STATES

**Crystal Springs Land and Water Company and S. G. Murphy,**

*Complainants and Appellants,*

*vs.*

**The City of Los Angeles,**

*Defendant and Appellee.*

## BRIEF FOR APPELLEE.

As stated in appellant's opening brief, the sole question involved is that of jurisdiction, as the United States Circuit Court for the Southern District of California dismissed the bill of complainants on the ground that the case was not one really and substantially involving a dispute or controversy properly within the jurisdiction of the court.

The bill was filed by the appellants evidently under the statute of the State of California, which authorizes an action to be brought for the

purpose of quieting the title to real estate generally without the necessity of showing any particular defect, or that there is a cloud on such title.

Section 738, Code of Civil Procedure.

We say that such is the object of the bill, as the prayer is for a general decree quieting title, although there are set up in the body of the bill several statutes of the State which, as appellants claim, have the effect of depriving them of their property without due process of law, and which are contrary to the treaty of Guadalupe Hidalgo; but the bill does not show as a matter of fact that the defendant claims title solely through these statutes, but, on the contrary, alleges that the City claims to be the owner of the property in controversy "by virtue of the laws of Mexico governing and "regulating and fixing the rights of a pueblo to "the waters of streams flowing through the said "pueblos, and by the said several acts of the "Legislature."

Paragraph XXIII of Bill.

The property, the title to which is thus sought to be quieted, consists of certain so-called "percolating" waters, which are alleged to have been developed by complainants and their predecessors, by means of excavations made either in land owned by them, or in land upon which the right of development had been acquired.

The defendant demurred to the bill for want of jurisdiction, and the Circuit Court over-ruled the demurrer on the ground that, while a federal question was not involved so far as it arose on the treaty of Guadalupe Hidalgo, yet that, as one of the acts of the Legislature, above referred to, had the effect of depriving the complaints of their property without due process of law; this gave rise to a federal question which conferred jurisdiction.

Record, folios 83–89.

These statutes were acts incorporating the defendant—its charters—and they purport substantially to grant to the City all of the waters *flowing* in the Los Angeles River, and the right to develop the waters *flowing* beneath the surface in the bed of the same river, the bill charging that defendant claims that the alleged percolating waters, developed by complainants or their precedessors, were part of the stream.

Record folios 14–17.

The defendant then answered, disclaiming any right under the acts of the Legislature mentioned in the bill, or under any other act of the Legislature, so far as the right was ever vested in the complainants or their predecessors in interest; and upon the coming in of the answer the court dismissed the bill on the ground that

such disclaimer removed the only federal question which was involved.

See Opinion, Record, folios 100–120.

I

That the case does not involve a federal question, is, we submit, conclusively shown by the opinion of the learned judge of the court below.

The attempt to conjure up a case within the jurisdiction of the United States Circuit Court, by the setting up of the acts of the legislature mentioned in the bill, is a very lame one.

The bill does not attempt to show that any act of the legislature purported to deprive the complainants or their predecessors of any property, and the only statute which has any appearance of attempting to do this is the charter of 1878, which is set up in an amendment to the bill in folios 30–1 of the record.

The charters of 1874 and, 1876 (folios 14–16 of records), expressly reserved all vested rights of third parties.

The charter of 1878 does not refer to complainants or to any third person, and does not justify the conclusion that it was the intention of the legislature to attempt to take away the property of private persons, and transfer them to the city of Los Angeles.

The reasonable construction of this provision of the charter containing the grant is that the

legislature intended to transfer to the city any rights which were vested in the State, and to declare the existence of a fact which already existed.

The charter was simply a conveyance by the State, and if the State has no interest in the property to transfer, nothing passed.

A legislative grant is on the same footing as one by government patent or other conveyance.

Rutherford v. Green, 2 Wheat. 196.

Complainants do not claim title under the State, and, therefore, the conveyance cannot be considered as a clond on their title.

Moreover, the charters all refer to the water *flowing* beneath the surface in the bed of the river, and do not purport to give the city the right to develop *percolating* waters; the object of the statutes being, as said by Mr. Justice Temple in Vernon Irrigation Company v. City of Los Angeles, 106 Cal. 253, to allow the water to be *saved* and not to *develop new water.*

As remarked in the last cited case [page 253] "it will hardly be claimed that the legislature "could grant to the city the water of the river so "as to deprive riparian owners of it."

Nor will it be claimed by any one in good faith that the charter provision has the effect of destroying vested rights, or that it is anything more than a quit claim on the part of the state

and a declaration of a fact which was supposed to (and did in truth) exist.

It is a settled rule of construction that a State statute will be so interpreted as to harmonize with the federal constitution, if the language used by the legislature is reasonably susceptible of such construction.

Grenada Co. vs. Brogden, 112 U. S. 261.
Cooley Const. Lim., 218–219.

The charter of 1889, which is claimed in the brief of appellants to also have the effect of depriving them of their property, is not a statute of the state, but was adopted by a vote of the electors of the city and approved by the legislature in accordance with the provisions of the State Constitution.

This charter does not, any more than the one of 1878, purport to affect the property rights of third parties.

But it was not pleaded in the bill, and it is settled that, where a statute is relied on in cases like the present, it must be brought to the attention of the court in the pleadings and will not be taken judicial notice of.

Powell v. Supervisors, 150 U. S. 433.

The original act incorporating the city of Los Angeles, passed in 1850, is also claimed to have the same effect attributed to the other charter, although this act, too, was not pleaded.

This last mentioned statute simply declares that the property, which was owned by the original Mexican pueblo, should be vested in the new municipality; and how it could be seriously claimed that this had the effect of depriving the predecessors of appellants of their property is beyond our comprehension.

It has, in many cases, been held that there must be some foundation for the claim that a federal question is involved, and, that it will not do merely to allege that such is the case without setting up distinctly the facts which justify such a conclusion.

The bill does not expressly claim that the statutes in question had the effect of violating a provision of the federal constitution, and the contention that they did have this effect is evidently an afterthought occurring to complainants after the suit was brought.

If this bill is maintainable at all, it is on the ground that a federal question is involved, for there is no diverse citizenship; and therefore, while the United States Circuit Court will administer the laws of the State in suits over which it has jurisdiction *by reason of the citizenship of the parties*, and in such cases will afford the remedies given by the statutes although they may extend the jurisdiction formerly exercised by courts of chancery. yet, in all cases where jurisdiction is assumed on account of the

controversy depending upon a federal question, the United States Courts do not modify the rules of pleading prevailing in the High Court of Chancery.

The charters, which were claimed to be obnoxious to the constitution of the United States, if they have that effect, are void on their face, and therefore do not constitute a cloud on the title of complainants.

This is a general rule of equity in suits to remove a cloud on a title, and it is embodied in sections 3412–3413 of the Civil Code of Califoruia, which provide substantially that where the instrument in void on its face, or requires the prodution of any other instrument showing such nullity, no cloud on the title exists.

The earliest California case or the subject is that of Pixley v. Huggins, 15 Cal. 127 (the opinion in which was delivered by Justice Stephen J. Field), and the rule announced then is the one subsequently incorporated in the sections of the Civil Code above referred to.

In Williams v. Corcoran, 46 Cal. 553, it was held that where a statute, under which a tax was levied, was in violation of the provisions of the State Constitution, a deed, based on a sale made for such taxes, would be void on its face, and would, therefore, not constitute a cloud on the title.

The same rule was announced by this court

in the case of Hannewinkle v. Georgetown, 15 Wall. 547, and is recognized in the case of Reynolds v. Bank, U. S. 405, in which latter case it was held that while a deed, void on its face, did not cast a cloud upon the title which a court of equity would undertake to remove, yet, where the State statute declared that such an instrument did in fact constitute a cloud, the federal courts had jurisdiction in equity to cancel it.

In order to give jurisdiction to the circuit court it was necessary for the bill to show that there was a real dispute or controversy between the parties involving a federal question which *must necessarily be determined* in the case.

It is not enough that it may become necessary during the progress of the case to give a construction to a law or treaty of the United States or to some provision of the federal constitution, but it must appear that such question will have to be determined in order to decide the case.

As stated in St. Joseph, etc., R. R. Co. v. Steele, 167 U. S. 559: "Not every mere allega-"tion of the existence of a federal question in a "controversy will suffice for that purpose. "There must be a real substantial question on "which the case may be made to turn."

So in New Orleans v. New Orleans W. W. Co., 142 U. S. 79, it is held that a bare claim that rights possessed under the federal constitution are infringed, without any real foundation

for such claim, is not sufficient, and the court says:

"While there is in the answer of the city a formal averment that the ordinance impaired the obligation of a contract arising out of the act of 1877, which entitled the city to a supply of water free from charge, the bare averment of a federal question is not, in all cases, sufficient. It must not be wholly without foundation. There must, at least, be color of ground for such averment, otherwise a federal question might be set up in almost any case and the jurisdiction of this court invoked simply for the purpose of delay."

In Hamblin v. Western Land Co., 147 U. S. 542, the last cited case was approved, and the court said: "A real and not a fictitious federal "question is essential to the jurisdiction of this "court over the judgments of state courts."

So, in St. Louis, etc., Ry. Co. v. Missouri, 156 U. S. 478, the last two cases are cited with approval, and the following language is used:

"The bare averment, in the answers, of supposed infringements in the proceedings of rights possessed by the respondents under the constitution of the United States, will not alone suffice."

See also Muse v. Arlington Hotel Co., 168 U. S. 430.

It is alleged in the bill that the appellants are in possession of the property in controversy, and it is not suggested that the city of Los Angeles is interfering with such possession in any way, or is seeking in any manner to enforce any of its rights under the charters which are attacked.

There is, therefore, no controversy which is the subject of a suit in equity in the United States Circuit Court.

Moreover, it does not appear that the question concerning the effect of these charters would ever have been passed upon by the circuit court, for if it were determined that the city was entitled to the exclusive use of the waters in question by reason of its ownership of its pueblo lands and by virtue of the grant made to it by the laws of Spain and Mexico, then it would not be necessary to determine whether the charters had the effect of divesting appellants of their interest in those waters.

As a matter of fact it has several times been decided by the Supreme Court of California that the city did have the paramount and exclusive right to the use of all of the waters of the Los Angeles river to the extent of the needs of the municipality.

In Elms v. City of Los Angeles, 58 Cal. 80, the ground of the division was the adverse user of the waters for nearly a century.

In Vernon Irrigation Co. vs. City of Los Angeles, 106 Cal. 237 *Supra.*, it was determined that that the city's ownership existed also by virtue of the laws of Spain and Mexico which vested in pueblos the right to the waters of all streams used by the inhabitants.

In city of Los Angeles v. Pomeroy 124 Cal. 597, the doctrine established in the Vernon Irrigation Co. case, with regard to the rights of pueblos to irrigable streams, was re-affirmed, and it was held that waters flowing beneath the surface were part of the stream and were governed by the same rules as the surface flow.

The Circuit Court would have had no jurisdiction to enter upon the hearing of the case except for the purpose of determinig the federal question, and, therefore, if the determination of other questions would dispose of the case before the federal one was reached, this circumstance shows that it is a "potential" and not an actual case, and thus comes within the rule declared in New Orleans v. Benjamin 153 U. S. 654.

Appellants are not content to set up the charters as creating the cloud on their title, but seek to have such title quieted against *all possible claims* of the city, and it is not contended that the Circuit Court would have jurisdiction (so far as relates to the constitutional question), over

any of the claims except the one based on the charter provisions.

The rule established in this Court on appeals from and writs of error to the highest State court, is that, if the State court decide the case upon a ground not involving a federal question, (although such question was properly raised and determined adversely to the appellant), the judgment will not be reviewed by this court.

Gettis v. Stinchfield, 161 U. S. page —;
McManus v. O'Sullivan, 91 U. S. 578;
Powell v. Supervisors, 150 U. S. 433, *supra*;
Castillo v. McConnico, 168 U. S. 674;
Eustis v. Bolles 150 U. S. 361;
Pierce v. Somerset Ry. Co., 171 U. S. 641;
Seneca Nation v. Christy, 162 U: S. 283;
Columbia W. P. Co. v. Columbia El. Str. R. L. and P. Co., 172 U. S. 474;
Allen v. S. P. R. R., 173 U. S. 479;
White v. Leovy, 174 U. S. 91.

The same rule should apply in suits originally brought in the circuit court, and if it appear that the federal question need not necessarily be determined, then the controversy will not be deemed to involve such question so as to give jurisdiction.

That is the exact state of facts in the present case. If the suit had been originally brought in the State court, it could not have been removed

to the federal court, as it would have been impossible to determine, in advance, that the decision of the former court would not have sustained the title of the City on some ground other than the sufficiency of the charters to divest the property of the appellants here.

In the case of Little York G. W. and W. Co. v. Keyes, 96 U. S. 199, which was attempted to be removed by defendant to the United States Circuit Court, this Court, in affirming the order of the Circuit Court remanding the case to the State Court, used the following language: "A case cannot be removed from a State Court simply because, in the progress of the litigation, it may become necessary to give a construction to the constitution or laws of the United States. The *decision* of the case must depend upon that construction. The suit must, in part, at least, arise out of a controversey between the parties in regard to the operation and effect of the constitution or laws upon the facts involved."

This Court has held that the plaintiff cannot anticipate the defense in order to bring in a federal question.

Shreveport v. Cole, 129 U. S. 36;

Tennessee v. U. & P. Bank, 152 U. S. 454.

This is what the appellants seek to do here—anticipate a defense—which however, the appellee declines to make.

II.

Even if the bill could be considered as sufficiently setting forth a prima facie controversy concerning the effect of the grant contained in the charters, yet, when the City expressly disclaimed any interest in the property in question under those charters, so far as such interest was ever vested in the appellants or their predecessors in interest, this effectually disposes of the case, because there was no issue left for the Circuit Court to determine.

The bill avers that the defendant claims to own the property in controversy under the charters and by virtue of the laws of Mexico, and, although such an averment, so far as it relates to the acquirement by the City of the property of appellant, under the charters, is pregnant with absurdity (because neither the City of Los Angeles nor any rational being would ever make such an unfounded claim), yet, supposing that the Court would seriously consider it, the moment that an answer came in denying that any such claim was made, and expressly disclaiming the right, it became manifest that no dispute in fact did exist between the parties.

The case of Robinson v. Anderson, 121 U. S. 522, (cited by the learned judge of the Court below in his opinion), is conclusive on this point.

The contention of appellants that the city

could not disclaim having acquired any rights under the charters is a strange one.

Complainants themselves alleged expressly that the defendant acquired no right under the charters, and the answer admitted this to be the case.

It is still asserted by appellants that the charters were ineffectual to pass their property rights to the City, and we admit it; so that we fail to see how the City, through its counsel, could be precluded from admitting the truth of an allegation where all of the parties agree that the facts are correctly stated.

Even if the City could not be bound by the admission of its counsel of the truth of a matter contrary to the fact, certainly the rule would not apply in a case where the charge was admitted to be true by all of the parties.

But appellants cannot and do not say that the City has any title under the charters which its counsel are prevented from disclaiming, and the case is simply one of an admission according to the undisputed truth.

But the rights of the City with regard to the ownership of property are like those of a private individual, and are subject to all of the rules of evidence and pleading which prevail in litigation between natural persons; and this is shown by the authorities cited in the opinion of the court below.

In this connection it may be well to state that the disclaimer in the answer of any rights under the charter is a qualified one, being limited to any title that was ever vested in the appellants, or their predecessors; for there may have been some interest vested in the State by reason of having succeeded to the sovereigns rights of Mexico in innavigable streams as suggested in Lux v. Haggin, 69 Cal. 336–340, and as the charter of 1850 was passed prior to the one adopting the common law, the title of the State vested in the City. [Stats. 1850 pp. 155, 219].

It is contended that the case arises under the treaty of Guadalupe Hidalgo.

We do not see how such a contention could be made except upon the assumption that that treaty guarantees certain rights to the complainants which the City charters, already referred to, purport to take away.

The appellants invoke the protection of the treaty, and as protection presupposes an assault, there would be nothing to put the treaty into operation until something had been done to take away the appellants' property.

A case certainly cannot arise under the treaty so long as the rights, which are accorded by it, remain undisturbed.

But however this may be—whether the State ever had any interest in the waters of the Los

Angeles River or not—the answer does positively and unequivocally repudiate claiming any right that was ever vested in appellants or in any one from whom they derive title.

The distinction between the case of Illinois v. Illinois Central R. R. Co. 33 Fed. 721, (cited by appellants), and the present case is obvious. There, a public statute, repealing another statute, which had attempted to divest the State of Illinois of its sovereign rights to lands in the bed of Lake Michigan, was disclaimed under in a suit brought by the State to enforce those rights, and it was held that it was not competent for the Attorney General to do so. On appeal, (146 U. S. 387), this Court decided that the repealing Act was valid, and that the legislature did not possess the power of granting away lands held by the State as a public trust.

What we have already said, in discussing the question as to whether or not the bill presents the question of a violation of the Constitution of the United States, applies here with regard to the claim that the treaty rights were attempted to be taken away by the Legislature.

With regard to the capacity of the appellants to invoke the protection of the treaty, we submit that there is nothing in its provisions which covers the present case, because, upon referring to that treaty, we find nothing therein which purports to protect complainants.

The provisions in reference to the rights of private Mexican citizens are contained in Articles VIII and IX.

Article VIII guarantees only the rights of ownership in favor of Mexicans who do not elect to become citizens of the United States, and their heirs and grantees; and it does not appear that the plaintiffs come within this category, but the contrary is actually the fact.

Article IX protected the rights of Mexican citizens, who elected to become citizens of the United States, *only until California should have been admitted to the Union*, after which time they became a part of the people of the State, with the same guarantees, and no other, that their fellow citizens had.

This question was squarely decided by this Court in the case of New Orleans v. Armas. 9 Peters 223, construing a similar provision in the treaty between France and the United States. There the plaintiff claimed title from the Spanish government, and the defendant, City of New Orleans (plaintiff in error), claimed it as part of the city lands, and as not grantable by the crown.

The Court, in its opinion, stated that "*to sustain the jurisdiction of the Court* in the case now under consideration, *it must be shown that the title set up by the City of New Orleans is protected by the treaty* ceding Louisiana to the United

States, or by some act of Congress applicable to that title."

The provisions of the treaty were: "The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted according to the principles of the Constitution to the enjoyment of all the rights etc., of citizens of the United States, and *in the meantime* they shall be maintained and protected in the free enjoyment of their liberty, property and religion."

The Court says: "Had any of these rights been violated, the individual might have brought his case in this Court under Section 25 of the Judiciary Act. But this stipulation ceased when Louisiana was admitted as a State. The right to bring questions of title, decided in the State Court, before this tribunal, is not classed among these immunities. The inhabitants of Louisiana enjoyed all the advantages of American citizenship in common with their brethren in their sister States when their titles are decided by the tribunals of the State."

It is also said (with regard to the contention that the City of New Orleans was protected in its rights to the land in controversy by the general terms of the treaty): "The judgment of the State Court appears on the record to have been determined on (and certainly ought to have been determined on) the opinion entertained by

that Court of the legal rights of the parties under the crowns of France and Spain. The case involves no principle on which this Court could take jurisdiction which would not apply to all the controversies respecting titles originating before the cession of Louisiana to the United States. It would also comprehend all controversies concerning titles in any of the new States, since they are admitted into the Union by laws expressed in similar language."

This case does not seem to have been cited, and the distinction between the rights of Mexican citizens who elected to become citizens of the United States and the rights of those who continued to be Mexican citizens was not apparently noticed, in Phillips v. Mound City Land & Water Assoc., 124 U. S. 605, and other cases passing upon the rights of owners of Mexican grants in California.

Again, even if such rights continue to be protected, complainants could not invoke that treaty in the present suit, for the reason that (as stated in the last cited case of Phillips v. Mound City Land & Water Assoc ) the treaty "neither created the rights nor defined them; their existence was not made to depend on the constitution, laws or treaties of the United States. There was nothing done but to provide that if they did in fact exist under the Mexican Law, or by reason of the action of the Mexican authorities, they

should be protected. Neither was any provision made as to the way of determining their existence. All that was left by implication to the ordinary judicial tribunal. Any Court, whether state or national, having jurisdiction of the parties and of the subject matter of the action, was free to act in the premises."

Complainants here claim that the effect of the Mexican grants, under which they derive title, was to vest in them the percolating water in the lands, if any existed; but whether this is true or not depends, not upon the constitution or a law or treaty of the United States, but upon the law of Mexico and of California regulating this matter, which it is always competent for the government exercising police powers to provide for.

In the Phillips case, the plaintiff in error contended that the treaty of Guadalupe Hidalgo protected him in the rights which were vested in his grantor at the time of the cession to the United States, and that, at that time, his grantor held a portion of a Mexican grant (afterward patented) by virtue of a partition had under the Mexican regime, and that the effect of the United States patent was to vest in him the title to that portion of the grant and not simply an undivided interest in the whole ranch.

The doctrine announced in that case was sustained in California Powder Works v. Davis, 151

U. S. 395, which was decided in the State Court on a writ of error.

There the respective parties each claimed under a different confirmed and patented Mexican grant, and the State Court had found that one of the grants had been, by forgery, antedated. This Court held that the determination of that fact was within the province of the State tribunals, and that, although such determination limited the effect of the grant and the patent issued thereon, yet no federal question arose.

With regard to the other phase of the question, as to whether the case arises under a law of the United States, we think that the above cited case of Phillips v. Mound City Land and Water Assoc. conclusively determines this question in the negative.

The right to the percolating waters in the lands described in the bill is not derived through a law of the United States, if such right ever existed; it must be claimed under the laws of Mexico in force at the time of the cession of California to the United States.

The patent for a confirmed Mexican grant is altogether different from one of a mining claim or government land.

The latter passes property which was confessedly that of the United States; whereas the former not only does not purport to convey the property of the United States, but is equivalent

to an express declaration that the land never belonged to the United States.

It is settled that the rights of private individuals to property in a ceded territory remain the same after the cession as before.

Mitchell v. U. S., 9 Peters 711.

U. S. v. Moreno, 1 Wall. 400.

Adam v. Norris, 103 U. S. 59[illegible].

The patent for a confirmed Mexican grant in California does not pass any title, but is merely equivalent to a declaration that the original grant was valid, and that the rights of property are such as attached to the grant at the time of the cession of California to the United States.

The case of Botiller v. Dominguez, is not in conflict with this position, but is in accord with it.

In that case it was held that the failure to present for confirmation a Mexican grant barred the rights of claimants.

On the other hand, in Adam v. Norris, 103 U. S. 591, *supra*, it was decided that where a patent had issued for a confirmed Mexican grant, such patent was an admission that the *rightful ownership had never been in the United States*, but at the time of the cession it had passed to the claimant and to those under whom he claimed.

There is no distinction in this regard between perfect and imperfect grants, for the patent has the conclusive effect of determining that the original grant was valid.

Of course, if the patent were determined to be void, it would be a question arising under the laws of the United States, but, conceding that the patent is valid, it belongs to the State Courts to determine what rights were attached to the patented land as easements, or to what servitudes it was subject during the existence of the Mexican law.

If the original grantees had conveyed their title prior to the cession to California, the confirmed title was subject to the conveyances already made and to all the contracts entered into by the then owners of the grant; and, although it might require a suit to enforce some of these rights, as for instance, to obtain a conveyance of the legal title passed by the patent, yet the confirmation of the grant and the issuance of the patent would not affect any of these rights.

On the contrary, the Act of March 3, 1851, provides that the patent shall not affect the interests of third persons, showing that it was not intended to change the title but to confirm it as it already existed.

This is shown in the case of Phillips v. Mound City Land & Water Assoc., in which it is expressly declared that the patent did not, in equity, affect the rights of those who acquired title under the original grantees.

The case of Botiller v. Dominguez, *supra*, also reiterates the same doctrine, and it is there said

by the Court, "obviously it [the act of March 3, "1851] was not intended to adjust or settle titles "between private citizens making claim to the "same lands."

The determination of what rights belong to lands included in a Mexican grant, and for which a patent has been issued, so far as relates to percolating water or riparian rights, or easements or servitudes, depends not on the laws of the United States, but upon those of Mexico or of this State.

In Kennedy v. Hunt, 7 How. 590 (cited and approved in Phillips v. Mound City, etc.), it was determined by the United States Supreme Court that the question of the rights to alluvion claimed by two different parties, by one under a Spanish grant confirmed by treaty, and by the other under an act of Congress, involved no federal question, but belonged to the local law of the State to determine what the legal appurtenances to those lands, as well as other lands belonging to private individuals, were.

See also Eldridge v. Trezevant, 160 U. S. 452.

Hardin v. Jordan, 140 U. S. 371.

It does not appear, nor can it be presumed, that the validity of the patents, under which complainants claim, will ever be attacked, and as said in Los Angeles F. & M. Co. v. Hoff, 48 Fed. R. 840, such patents conclusively establish the

validity of the grants upon which they are based and the correctness of the location of the land granted.

But the location of the land, as well as the rights which attach to it, or to which it is subject, depends upon what contracts the former owners have entered into, and what the local law, both of Mexico and of the state of California, was or is.

It is true that the Supreme Court of California has held that percolating waters belong to the owner of the soil and can be taken by him for his own benefit; but this ruling is based, not on an act of Congress, but upon the local law, and it was the province of the State Court to determine what this local rule was, and it might have decided the reverse without involving a federal question.

A United States patent may, in fact, be defeated, in part at least, by an erroneous determination in regard to the boundaries of patented land; but this fact does not prevent the State Courts from passing on the question of the boundaries, nor give the federal courts jurisdiction to revise such action.

The only requirement is that it be conceded that the patent was valid and passed title to the land therein purported to be granted; but the location of the boundaries of these lands is a

fact, like any other fact, to be determined by the local courts

The authorities cited by appellants are not in conflict with those cited by us.

With regard to the cases of Martin v. Hunter's Lessee, 1 Wheat. 304, Smith v. Maryland, 6 Cranch, 286, Owings v. Norwood's Lessee, 5 Cranch. 344, all involve confiscation acts which were the only basis of title opposed to the right of parties claiming under the treaty between the United States and Great Britain; in other words, the question was whether or not the State statutes were valid, for if they were not, then the title of the claimant (which was alleged to have been divested by the act of confiscation), was indisputably valid and sufficient.

The case of Glasgow v. Baker, 127 U. S. 560, arose on the construction of an act of Congress passed to carry out treaty stipulations, and had the effect *itself* of passing title in *praesenti*, and as the result of the suit turned upon the construction to be given to this act, this Court properly held that it had jurisdiction.

The case of Guitart v. Stoddard, 16 How. 508, explains the character of the rights created by the act of Congress of 18 2, which was construed in the case of Glasgow v. Baker *supra;* and it is there said that that statute had the effect of transferring the title, which had not passed from the former government.

In Knight v. Land Association, 142 U. S. 161, the decision of the State Court had the effect of taking away land which was included in the patent for the Pueblo of San Francisco, thus destroying the United States patent and giving the land to the grantee of the State, which claimed under an act of Congress subsequent to the treaty.

No one could doubt that this Court had jurisdiction in such a case, and to hold otherwise would be to say that the acts of Congress and proceedings taken under them could be made nugatory by a decision of the State Court.

So it is with the other cases cited by complainants—they either have no bearing upon the question, or are authorities in our favor.

The case of McDonough v. Millaudon, 3 How. 693, illustrates the principle for which we contend, that where the decision of the State Court is not in regard to the construction of an act of Congress, but, on the contrary, the act is given its full force and effect, and the only thing construed or considered is the law of the State or of the former government, or some question of fact, as with reference to boundaries, no federal question arises.

We quote from that case:

"The treaty with France of 1803 gave no further sanction to the boundary of McDonough's [claimant] title than it had by the grant; in respect

to its validity, the decision of the State Court supported the claim to the same extent that the treaty protected it, and therefore the decision was not opposed to the treaty."

The Court then goes on to show that the McDonough title was a perfect one, and was confirmed by Congress as such, though such confirmation was not necessary, as it was good on general principles of law; (the language of the Act being that all complete titles be recognized valid and complete against the United States), and then say:

"But in McDonough's case, as in other similar ones referred to above, the recognition extended only to the boundary the grants themselves furnished according to their landmarks and true construction under the local laws in virtue of which they were obtained. * * * The State Court held McDonough's title to be valid to every extent that it has been recognized by the United States, and only applied the local laws of Louisiana in its construction, so far as they had a controlling influence on the manner in which the side lines should be extended from the Mississippi river towards Lake Maurepas; and, as, in so doing, neither the treaty of 1803, nor any act of Congress or authority exercised under the United States, was drawn in question, this Court has no jurisdiction to revise the decision of the Court."

So in our case, the Court is informed by the pleadings that the patents to the various Mexican grants under which complainints claim title are conceded to be valid, and to pass the

lands which they purported to grant, and it is only with reference to the percolating waters which find their way into the Los Angeles river, and which are claimed by the City under a species of easement, that the dispute exists.

To determine this question requires a construction of the laws of Spain and Mexico, and not of the United States nor of the treaty with Mexico.

This easement depends upon local laws, and is a police regulation which the State is competent to make.

Claims of easements were not required to be presented by the Act establishing the Land Commission for California, but the question of their existence was left to be determined by the local Courts.

Counsel for appellants discuss the question concerning the rights of the City of Los Angeles as the successor of a Mexican pueblo to its pueblo lands and to the waters of the Los Angeles river, and say that "it is more than doubtful whether there was any such thing as a Spanish pueblo here at the time the grant was made", and refer to the case of the United States v. Santa Fe, 165 U. S. 675. We agree with counsel that these questions are immaterial on the present appeal, but, if they were, it would perhaps be sufficient to say that the last cited case involved the rights of a municipal corporation

which embraced the territory occupied as a town during the Mexican regime in New Mexico, but the town itself was not a pueblo established by the government; and herein lies the distinction between that pueblo and the predecessors of the City of Los Angeles

The pueblo of Los Angeles was duly founded as a government act, in the year of 1781, and thereby became entitled to the four square leagues which were afterwards confirmed and patented to the City of Los Angeles, as successor of the original pueblo.

In the cases in the California Reports, already referred to by us, establishing the rights of the City to the waters of the River, as well as in the case of Lux v. Miller, 69 Cal. 255, *supra*, the facts concerning the establishment of the pueblo, as well as the law which governed its rights, are discussed at considerable length, and should this Court desire to examine into the subject, we refer to those decisions as containing everything that need be said.

We respectfully submit that the Circuit Court properly dismissed the bill for want of jurisdiction, and that the decree should be confirmed.

S. O. Houghton

*Solicitor for Appellee.*

WALTER F. HAAS,
LEE & SCOTT,
*Of Counsel.*

# CHRYSTAL SPRINGS LAND AND WATER COMPANY *v.* LOS ANGELES.

APPEAL FROM THE CIRCUIT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

No. 41. Submitted March 15, 1900.—Decided April 9, 1900.

Decree below affirmed on the authority of the cases named in the opinion of the court.

THE case is stated in the opinion of the court.

*Mr. John Garber* for appellants.

*Mr. Walter F. Haas* for appellee. *Mr. S. O. Houghton* was on his brief.

THE CHIEF JUSTICE: Bill to quiet title to certain waters, water rights and works connected therewith. Bill dismissed for want of jurisdiction, and question of jurisdiction certified. Reported below, 82 Fed. Rep. 114; 76 Fed. Rep. 148.

Decree affirmed on authority of (1) *Phillips* v. *Mound City Association*, 124 U. S. 605; *California Powder Works* v. *Davis*, 151 U. S. 389, 395; *New Orleans* v. *De Armas*, 9 Peters, 224; *Borgmeyer* v. *Idler*, 159 U. S. 408; *Muse* v. *Arlington Hotel Company*, 168 U. S. 430. (2) *Robinson* v. *Anderson*, 121 U. S. 522; *Florida Central Railroad* v. *Bell*, 176 U. S. 321; *Gold Washing Company* v. *Keyes*, 96 U. S. 199; *Tennessee* v. *Union and Planters' Bank*, 152 U. S. 454; *New Orleans* v. *Benjamin*, 153 U. S. 411, 424.